

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

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United States Court of Appeals
for the District of Columbia Circuit
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FILED JAN 7 1971

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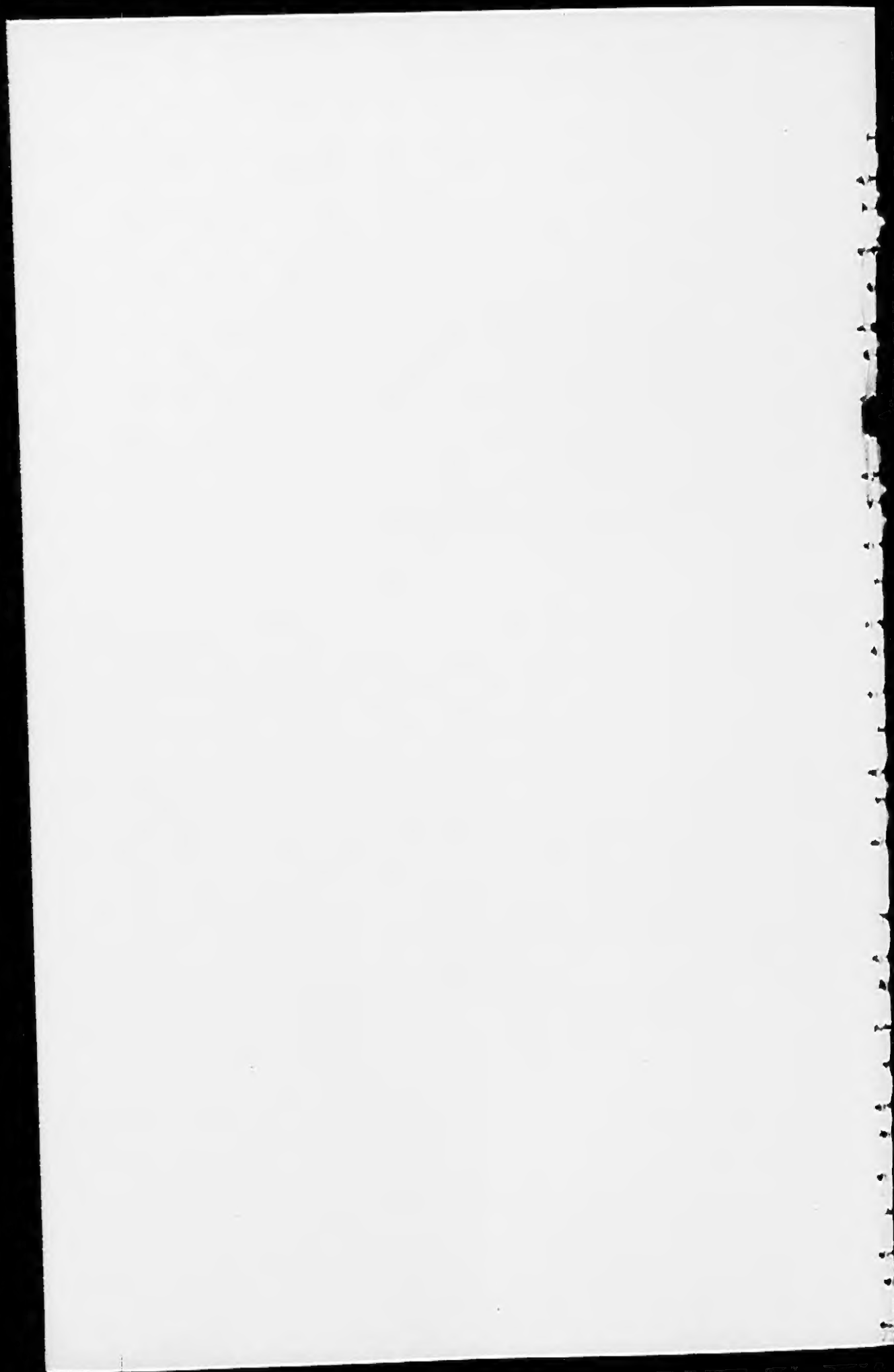


TABLE OF CONTENTS

	PAGE
Relevant Docket Entries	1
Exhibits:	
General Counsel's No. 2—Transcript of Proceedings in the United States District Court for the District of Maryland pursuant to petition for injunctive relief under Section 10(e) of the Act	2
Testimony in Open Court:	
Brent Gunts—	
Direct	8, 82
Cross	18, 83
Redirect	38, 41
Recross	40, 42
Alfred Burk—	
Direct	43, 84
Cross	46
Redirect	50, 53
Recross	51
W. Melvin Street—	
Direct	54
Cross	69
Redirect	75
Proceedings Before Trial Examiner	86
Testimony:	
Richard E. Berlin—	
Direct	96
Cross	106
Redirect	112
Mark F. Collins—	
Direct	114
Cross	123

	PAGE
Redirect	126
Recross	127

Exhibits:

Respondent's No. 1(A)—Portion of Agreement between WBAL Division, The Hearst Corporation and American Federation of Television and Radio Artists, Washington-Baltimore Local, effective September 11, 1963	129
Respondent's No. 1(B)—Portion of Agreement between WBAL Division, The Hearst Corporation and American Federation of Television and Radio Artists, Washington-Baltimore Local, effective September 8, 1965	130
Respondent's No. 2—Contract of employment between Baltimore News-American Division, The Hearst Corporation and Frank A. De-Filippo, effective April 30, 1968	131
Contract of employment between Baltimore News-American Division, The Hearst Corporation and John F. Steadman, effective October 11, 1966	135
Part of Respondent's No. 3(A)—Portions of Federal Communications Commission application for renewal of broadcast license of WBAL-TV	140
Part of Respondent's No. 3(B)—Portions of Federal Communications Commission application for renewal of broadcast license of WBAL Radio	143
Trial Examiner's Decision	147
Decision and Order of National Labor Relations Board	170
Notice posted by order of National Labor Relations Board	175

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RELEVANT DOCKET ENTRIES

September 23, 1968—Charge filed.

October 7, 1968—Complaint and Notice of Hearing, dated.

October 10, 1968—Regional Director's order rescheduling
hearing, dated.

November 5, 1968—Petitioner's¹ answer to complaint,
received.

November 6, 1968—Hearing Opened.

November 6, 1968—Hearing Closed.

¹ Petitioner herein is the Respondent before the Board.

APP. 2

January 27, 1969—Trial Examiner's Decision issued.

March 3, 1969—Petitioner's exceptions to the Trial Examiner's Decision, received.

June 13, 1969—Respondents'² motion to consolidate cases 5-CC- 446, 21-CC-1043 and 21-CC-1043-2, received (Motion denied, See Decision and Order, Page 1, Par. 2).

June 17, 1969—General Counsel's response to motion to consolidate, received.

June 19, 1969—Charging Party in case 5-CC-446's answer to motion to consolidate, received.

June 20, 1969—General Counsel's response to motion to consolidate, received.

August 27, 1970—Decision and Order issued by the National Labor Relations Board.

(2) GENERAL COUNSEL'S EXHIBIT NO. 2

*In the United States District Court
For The District of Maryland*

—
No. 19942 Civil

—
John A. Penello, etc.

vs.

*American Federation of Television
and Radio Artists, Washington-
Baltimore Local, AFL-CIO*

Baltimore, Maryland
October 7, 1968

The above-entitled case came on for hearing before His Honor, Edward S. Northrop, on order to show cause why injunction should not be issued, at 10:00 o'clock a.m.

² American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO is the Petitioner before the Court in Case No. 5-CC-446.

Appearances

For the Plaintiff: Maurice J. Nelligan, Charles B. Slaughter, James J. Doyle, Jr., and Theodore Sherbow.

For the Defendants: Bernard W. Rubenstein and Samuel Levine.

(3) PROCEEDINGS

(The Court) Good morning.

(The Clerk) Civil Action 19942, John A. Penello, Regional Director of the Fifth Region of the National Labor Relations Board versus American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO.

For the Plaintiff, Mr. Charles B. Slaughter, Mr. Maurice J. Nelligan, Theodore Sherbow, James J. Doyle, Jr.; and for the Respondents, Mr. Bernard W. Rubenstein and Mr. Samuel Levine.

(The Court) All right, Gentlemen.

(Mr. Rubenstein) If Your Honor please, before we start, the Respondent has not filed an answer, as a matter of fact we filed no formal papers in this, and I would like at this time for the record to file an oral answer so as to join the issues on the Government's petition, and, actually, we would admit — or, put it this way, we would deny the allegations of paragraphs 5(e), (g), (h), (i), (j) and (k), and paragraph 6 of the petition, and we would admit the other — I'm sorry, we would deny the allegations — yes, yes, and we would admit the other allegations of the petition, that is, paragraphs 1, 2, 3, and 4, 5(a), 5(b), 5(c), 5(d), and 5(f).

(The Court) Now, wait a minute, you admit 1, 2, 3, and 4?

(4) (Mr. Rubenstein) 1, 2, 3, and 4.

(The Court) In toto, and 5(a)—

(Mr. Rubenstein) 5(a), (b), (c), (d), and (f).

(The Court) (f)?

(Mr. Rubenstein) Yes, that, is, that we have a labor dispute with WBAL and they are picketing the premises of WBAL.

(The Court) Yes.

(Mr. Rubenstein) And we have denied—

(Mr. Slaughter) All other allegations of 5?

(Mr. Rubenstein) All other allegations of 5; and 6.

(The Court) All right, Gentlemen.

(Mr. Slaughter) May it please the Court, inasmuch as we have filed with the Court on Friday afternoon a brief in this matter which I believe sets out our concept of the really basic issue before the Court and have discussed it, in the interest of saving time, unless Your Honor would desire further comment on the part of the Government, I would waive an opening statement at this time and defer any further comments to argument at the end of the trial, sir.

(The Court) Well, let's see, can we say what the sole issue is, and that is common ownership here, that's about the size of it, isn't it?

(5) (Mr. Slaughter) That is, really, about the size of it, Your Honor, and whether or not, and whether or not, particularly in a context of reasonable cause to believe.

(The Court) Yes.

(Mr. Slaughter) In view of the cases which we have cited and discussed in our brief and other precedents, whether or not insofar as the 8(b)(4) is concerned it would be just and proper for the Court to grant injunctive relief against picketing at the News American in furtherance of a labor dispute at WBAL, with which dispute the News American has absolutely no interest at all.

(The Court) All right, sir.

Do you want to make an opening statement?

(Mr. Rubenstein) Well, in order to clarify the issues, we have not filed, frankly, I've not had time to file anything with the Court, but I think that the legal issues are relatively simple, and that it is, basically, a factual situation.

We have concededly, I think it will be, common ownership.

(The Court) Yes.

(Mr. Rubenstein) As a matter of fact, one legal entity. We don't even have two legal entities with common ownership. We have one legal entity. And the Board test and the test that the Courts use of actual or active common (6) control, and I think that we will prove to Your Honor that there is also, in addition to one legal entity, actual or active common control.

(The Court) Now, when you say one legal entity, of course, you're referring to The Hearst Corporation and saying, in effect, that you concede that even though there may be one corporation up here, that, that if there are two legal entities, so to speak, I mean, two — I mean, not two legal entities, if there is a control in WBAL and control in the News American separate and apart, you agree with the cases which say that you don't have to have a legal entity in the true, or, rather, the legal definition of such, that is, a corporation, or a person, and that sort of thing?

(Mr. Rubenstein) Well, of course—

(The Court) Are you conceding that?

(Mr. Rubenstein) No, I am not conceding that point because these cases, in each of these cases, while there were common ownership—

(The Court) Yes.

(Mr. Rubenstein) — there were, in fact, separate legal entities with the one exception of the District Court injunction decision in the Kennedy case which came down a

(The Court) (f)?

(Mr. Rubenstein) Yes, that, is, that we have a labor dispute with WBAL and they are picketing the premises of WBAL.

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(Mr. Rubenstein) And we have denied—

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(The Court) Are you conceding that?

(Mr. Rubenstein) No, I am not conceding that point because these cases, in each of these cases, while there were common ownership—

(The Court) Yes.

(Mr. Rubenstein) — there were, in fact, separate legal entities with the one exception of the District Court injunction decision in the Kennedy case which came down a

week or so ago, but which involved, however, I think very distinct differences, they involved two Hearst papers, but (7) one was in San Francisco and the other was in Los Angeles.

(The Court) Yes.

(Mr. Rubenstein) Now, we don't have that situation. We have two Baltimore operations.

(The Court) Yes.

(Mr. Rubenstein) But these other cases that are cited by the Government, Poole's Warehousing, the Miami case, and so on—

(The Court) Yes.

(Mr. Rubenstein) — there were, in fact, two legal entities with common control. One was a wholly-owned subsidiary, or something of that, but there were, in fact, legal entities.

Now, what the Court or the Board makes of it, or what this Court would make of that distinction, I'm not really prepared to argue full at this point.

(The Court) All right.

(Mr. Rubenstein) But it's there.

(The Court) All right.

(Mr. Rubenstein) And I think that the fact that we do have in this situation one legal owner, one legal entity, is an added factor which we would hope that the Court would consider.

It's not the key factor, but it's certainly a factor in the question of control.

(8) (The Court) What I am really attempting to say is that — you say that there are decisions which do not hold strictly that there be an actual legal entity, as such, but the question is of control.

(Mr. Rubenstein) That's correct.

I would concede that the basic issue before this Court is one of control.

(The Court) All right.

(Mr. Rubenstein) But I think, and I certainly would argue, that in the discussion of the question of control, the legal status of the companies is a factor.

(The Court) Is a factor?

(Mr. Rubenstein) Yes.

(The Court) But it's not an all-controlling factor?

(Mr. Rubenstein) No, it's not an all-controlling—

(The Court) Have departed from the usual standard legal concept of what a legal entity is?

(Mr. Rubenstein) That's correct.

(The Court) All right.

(Mr. Rubenstein) It is not an all controlling factor.

(The Court) I just wanted to make sure that I understood your position in reference to it.

(Mr. Rubenstein) Right.

(9) (The Court) Now, is there anything that you people have to add to what we're trying to determine here today?

(Mr. Slaughter) I don't believe so at this time, if Your Honor please.

(The Court) All right.

(Mr. Slaughter) I think the issues are very well framed at this point.

We, of course, would and do and have in our brief contended to the contrary.

(The Court) Yes.

(Mr. Slaughter) We are prepared to proceed.

(The Court) All right.

(Mr. Slaughter) With the testimony.

(The Court) Very well, you may do so.

(Mr. Nelligan) Mr. Gunts.

BRENT GUNTS,

was called as a witness for and on behalf of the Plaintiff,
and, having been first duly sworn, testified as follows:

(The Clerk) State your name for the record, sir.

(The Witness) Brent Gunts, G-u-n-t-s.

DIRECT EXAMINATION

By Mr. Nelligan:

Q. Mr. Gunts, you are employed by whom, sir? (10) A.
I'm employed by the WBAL Division of The Hearst Corporation.

Q. In what capacity? A. General Manager of the television station.

Q. And how long have you been so employed in that capacity? A. Approximately nine years and eight months.

Q. And is that the extent of your association with WBAL-TV? A. No, I was associated with WBAL when I had my own business and was a producer of television programs from 1949 until 1959, WBAL was a customer of mine, as were the other television stations in Baltimore.

Q. But there was no employment relationship at that time? A. No, sir.

Q. Now, The Hearst Corporation is located where, sir? A. In New York City, the headquarters.

Q. And what is the relationship between WBAL-TV Division and The Hearst Corporation? A. Well, Hearst Corporation owns the WBAL Division.

Q. It is a division? A. It is a distinct division of The Hearst Corporation.

(11) Q. Were you ever employed by the News American? A. No, sir.

Q. As General Manager of WBAL-TV, what are the areas of your responsibility? A. I'm totally charged with the planning and implementation of the operation of the television station, in complete accordance with all Federal Communications Commission laws and regulations; I determine the number of people that need to be hired in order to operate WBAL-TV; to approve of the hiring and firing of such people; to determine the salaries of such people; to plan and implement labor policies as regards WBAL-TV; to plan the programming for the television station; to set the rates for its advertising; and to establish the sales organization that will sell its advertising; to plan and implement its promotion; and to plan and implement all aspects of its technical operation; and also to produce a profit for The Hearst Corporation; and also to keep accounting of all of the business affairs that go on as regards the WBAL-TV Division.

Q. Now, in all these areas of your responsibility, you have final authority to meet these responsibilities? A. I have final authority on all of the areas. On some of the areas, I collaborate with Mr. Al Burk, who is the Manager of the radio station, the collaboration being (12) brought about as we occupy the same premises, and certain matters regarding the building and its operation have to be decided through mutual agreement, and also because we have two labor contracts that are joint contracts for both the radio and television station, one with the American Federation of Radio Artists and one with the IBEW, we must confer on those matters.

But on all matters regarding the television station, I have complete final authority, except for the spending of capital sums in excess of \$10,000.00. These I send to New York for review.

Q. Well, now, just backing up a little bit, I think this question is answered by implication, but just so that the record is quite clear.

Specifically with respect to the area of labor relations, who formulates and determines the policies within that area at WBAL-TV? A. Mr. Burk and I do, on the joint contracts, I do on the IATSE contracts, which are applicable only to the television station.

(The Court) Wait a minute.

Burk does it in reference to what, Burk and yourself?

(The Witness) On the AFTRA contracts—

(The Court) AFTRA.

(13) (The Witness) — and IBEW contracts, we mutually make the decisions.

By Mr. Nelligan:

Q. But with respect to aspects solely related to WBAL-TV, as opposed to WBAL-Radio, who formulates and determines policies in the labor relations area? A. I do.

Q. Now, before establishing those policies, do you, or not, seek advice, direction, or guidance, from The Hearst Corporation? A. I do not.

Q. Before establishing those policies, does The Hearst Corporation give you advice? A. They do not.

Q. Now, to the extent that you have a superior, who would that be, Mr. Gunts? A. I answer to Mr. Frank Massey, who is the Executive Vice President of The Hearst Corporation in New York, and to Mr. Richard Berlin, who is the President and Chief Executive Officer of The Hearst Corporation.

Q. Now, you have already told us that you report certain capital expenditures to New York.

In other areas, if any, would you make a report to New York? A. We send a monthly profit and loss statement to

New (14) York showing how much money we have taken in, how much money we have paid out, how much money was left over for them.

Q. How about a budget? A. At the beginning of the year, we submit a budget on what we anticipate producing in the course of the year, both as to revenue, how much we plan to spend, and how much profit we expect to make.

Q. What difference, if any, exists between your reporting to New York on certain capital expenditures and your handling of operational expenses for WBAL-TV? A. I have complete authority to spend any sums of money for operational expenses without any reference to New York.

Q. Can you give us an example of that? A. The purchase of motion picture films, syndicated programs, we have on occasion, and recently, and in the past, obligated ourselves to expenditures up to and including a million dollars without any reference to New York.

Q. You have already identified certain Unions with whom you have collective bargaining relations at WBAL and mentioned the American Federation of Television and Radio Artists, otherwise known as AFTRA; what group or groups of employees at BAL does AFTRA represent? A. With the television station, they represent the staff announcers, and all people appearing before the cameras (15) and/or the microphones, with certain exemptions that are specifically spelled out in the contract.

That's under one contract.

In a recent election, the News Department of the television station elected AFTRA as their collective bargaining agent, and at such time as a contract is concluded, they will represent them, or they represent them now, but there is no contract.

Q. Now, for the first group that you mentioned, namely, the staff announcers, and others, excluding the news men, you have had a series of collective bargaining agreements over the years pertaining to that group, have you not? A.

Ever since I have been with the station, and I believe dating back some ten or more years before that.

Q. And when did the most recent contract covering that group expire? A. Midnight on September 1st of 1968.

Q. Now, what events have followed the expiration of that contract as well as the establishment of the new collective bargaining unit for the news men since September 1? A. Well, we notified AFTRA in early June that we were desirous of renegotiating the existing contract.

Fundamentally, our purpose being that we wanted to (16) request separate contracts, one for the radio station and one for the television station, because we no longer felt the single agreement was applicable to the operations today.

There were various meetings and negotiating sessions and the contract expired on September the 1st at midnight. We continued negotiations until, I believe, it was September the 19th, on which date the AFTRA representatives walked out on our negotiations, and on Saturday the 21st there was a picket line at the property.

In the interim, the News Department had petitioned for an election and the election took place on the Monday of the same week, that would be Monday the 14th, I guess it was, at which time the News Department voted AFTRA as their collective bargaining agent.

There had been no meetings to discuss a contract with the News, as regards the News matter, at the time that the strike took place.

Q. And this picketing continued down to today? A. As of this morning when I left the station.

Q. Now, in the course of these current negotiations with AFTRA, who has the final authority for management on the bargaining issues? A. I do.

Q. Are you personally participating in some or all of these negotiations? (17) A. Yes.

Q. Who decides what objectives and policies are to be pursued in these negotiations, from management's point of view? A. As regards the television station, I do.

Q. And in the course of these same negotiations, what, if any, advice or direction have you received from The Hearst Corporation in New York? A. None.

Q. Have you sought any? A. No.

Q. What contact, if any, as a matter of fact, have you had with The Hearst Corporation in New York regarding this current labor dispute? A. None.

Q. Moving on to a different area, Mr. Gunts, how many other television divisions are there within The Hearst Corporation? A. There is the Pittsburgh Division, which operates a radio and television station; and there is a Milwaukee Division, which operates a radio and television station; and then there is a Puerto Rican Division, which operates a radio station.

Q. And do you know what networks, broadcasting networks, these TV stations are affiliated with? (18) A. The Pittsburgh television station is associated with the American Broadcasting Company; the Milwaukee television station is associated with the Columbia Broadcasting System; and we are associated with NBC; there is no network, that I know of, in Puerto Rico, but I don't really know anything about Puerto Rico.

Q. All right.

What TV services, if any, are available to WBAL from within the Hearst organization? A. No services, as such.

The Hearst Corporation has a division called King Features which is fundamentally in the newspaper business, I believe, but which also produces certain syndicated programs for television.

Q. Does your station avail itself of this? A. We have and we have not, depending upon whether the property that they are offering to us is appropriate.

Q. Who decides whether or not you will avail yourself of that service? A. I do.

Q. Now, is there any engineering office which was available to the TV station within the Hearst organization? A. There is a Hearst engineering office, which is a consulting service, available to the various Managers of the broadcast properties for advice and counsel, as they (19) might seek it.

Q. And how is this engineering office supported? A. Supported by the broadcast properties. The Pittsburgh Division contributes 30 per cent, the Milwaukee Division contributes 30 per cent, Baltimore Division contributes 30 per cent, Puerto Rico pays 10 per cent.

Q. Do you know how this arrangement compares with other service organizations for other broadcasting groups? A. Well, I'm not intimately aware, but I believe such broadcasting groups as Cox, Starr, Westinghouse, operate in a completely different manner. They have a large headquarters organization with engineering services, program services, promotion services, sales organizations, that plan and see that policies reflecting the corporate approach are carried out in these operations.

Q. Now, in the area of fringe benefits, does the Hearst organization have any plan available for its divisions? A. Hearst Corporation implemented, about a year and a half ago, a pension plan which was made available to its various divisions, and then last January they implemented a broadcast pension plan which was also made available to its various divisions.

Q. Now, who within a division would be eligible to participate? (20) A. For the big plan, or the Hearst plan, all non-Union personnel in the — I guess in all of the divisions, but I'm not privy to that information, but at least in the broadcast properties are eligible.

(The Court) Now, wait a minute.

Non-Union, too, did you say, in the broadcast?

(The Witness) All non-Union people in our organization.

(The Court) In the broadcast, in this last policy that was set up, January 1st?

(The Witness) The broadcast plan was set up exclusively for Union personnel—

(The Court) Oh.

(The Witness) —in the broadcast properties, and it was set up at the request of the General Managers of the various broadcast divisions.

By Mr. Nelligan:

Q. Now, with respect to the plan that applies to the unrepresented people and its application to a particular property, who decides whether or not that property will avail itself of that plan? A. The General Manager.

Q. In your case, that would be you? A. Yes, sir.

Q. With respect to the News American, which is the (21) sister division, what contact, if any, do you have with the management of the News American regarding their operations or policy determinations? A. None.

Q. What business relationships do you have with the News American? A. I have an advertising contract with the News American whereby I spend a certain amount of money in the newspaper to buy advertising space to promote the television station. They also have a contract with the television station for the use of advertising time on the television station.

Q. Any other business relationship between the two? A. We announce ourselves on the air as the News American station.

Q. These contracts for advertising that you have with the News American, how are the rates established? A. The same rates that are available to any other advertiser who advertises on our station, and I pay the same rate for the newspaper space that any other advertiser would, to the best of my knowledge.

Q. What are the sources of WBAL news, Mr. Gunts? A. The Associated Press, the United Press International, the National Broadcasting Company, and our own News Department.

(22) Q. To what extent, if any, do you rely upon the news gathering services of the News American? A. We don't.

Q. Is there any interchange or transfer of employees between the News American and WBAL? A. Nothing, unless there should be an incidental employment of somebody who had left the News American, or vice versa, but there is no interchange of personnel.

We use Mr. White, the Managing Editor of the News American, periodically on news conferences and on election programs because of his particular expertise in the news field. He is hired as an independent contractor by WBAL-Television and paid by WBAL-Television.

I think on occasion we have hired Mr. DeFilippo of the News American staff, but we also hire similar people from the Associated Press, the United Press International, from the Afro-American, and just recently we engaged the services of a Sunpaper reporter, and have tried in the past to do same, but it has not in the past been approved by the management of the Sunpapers.

Now, I understand, that policy has changed.

Q. In the instances where you would use a personality from WBAL, such as Mr. DeFilippo, or Mr. White — from the News American, rather — are these gentlemen, as independent contractors, paid the going rate or some other rate? (23) Paid the same rate that anybody else would be paid.

Q. Is there any use by WBAL of News American services or products, other than at the going rate charged by any other commercial customer? A. We subscribe to the newspapers and pay for them.

Q. You subscribe to the News American? A. Yes, sir.

Q. And you pay for them? A. That's correct.

We receive the Sunpapers free, but we pay for the News American.

Q. Can you tell me, Mr. Gunts, why the TV station makes the announcement of its relationship with the News American over the air? A. Our headquarters in New York asked us to do what is not unusual in the television business where the station is owned by a company that owns other companies to give some publicity to the newspaper because of the very heavy competitive situation that exists here in Baltimore where the competing newspaper owns a television station and identifies itself as that newspaper.

This is not unusual in the broadcast industry. The Milwaukee Journal's television station identifies itself as the Milwaukee Journal station, the Travelers Insurance (24) station identifies itself as the Travelers Insurance Company in Hartford, and so forth.

Q. Other than these relationships which you have identified for us between BAL-TV and the News American, how would you describe the overall relationship between these two divisions? A. Highly competitive.

Q. Incidentally, Mr. Gunts—

(The Court) Wait a minute.

I didn't get that.

(The Witness) Highly competitive.

(The Court) Between what, now?

(The Witness) The News American and WBAL.

By Mr. Nelligan:

Q. Can you give us a little detail on that, sir? A. Well, we compete actively for the advertising dollar of the community, the same as they do, and our sales staff is instructed to work diligently on taking lineage out of the newspapers and putting it into television, and that includes the News American.

Q. How are you compensated for your services as General Manager? A. I'm compensated by a basic salary and a participation in the profits of WBAL-Television Division.

Q. Mr. Gunts, from whom do you seek advice on labor (25) relations matters, legal advice, that is? A. Mr. Doyle, of Sherbow, Shea and Doyle.

Q. That's Mr. Doyle, sitting to my left? A. Of this firm.

Q. And how did that firm come to be selected, in other words, let me — I withdraw that.

Who selected that firm? A. I don't know, they were employed by the company when I came with the company.

Q. Are you aware of the fact that The Hearst Corporation has a Legal Department available, or a law firm available for labor relations advice? A. I understand that they have.

Q. Have you sought their advice on labor relations matters? A. No.

Q. If you were to decide to drop Sherbow, Shea and Doyle — I withdraw that.

In whom does the authority rest to make a change of local labor relations counsel? A. I can't tell you because it has never been a topic for discussion.

I presume that it's one of the decisions that I would have to make.

Q. You simply have never been confronted with it? (26) A. I've never had any desire to drop them yet. I've been completely satisfied with the service.

CROSS EXAMINATION

By Mr. Rubenstein:

Q. Mr. Gunts, WBAL is not a separate corporate entity, is it? A. No, it's a division.

Q. It's a division.

And the stockholders to whom you have to account are the stockholders of The Hearst Corporation, is that correct?

A. As far as I know.

Q. Right.

And the persons who hire you and to whom you personally report are The Hearst Corporation officers? A. That's correct.

Q. The President, and I believe you said the Executive Vice President of The Hearst Corporation? A. Yes, sir.

Q. Now, in addition, WBAL, both Radio and Television, makes application to the FCC and periodic reports to FCC, is that correct? A. That's correct.

(27) Q. Is it not so that the FCC report, the initial application says, owned and operated by The Hearst Corporation? A. I believe it says that.

I think it says WBAL-TV Division on the license application.

Q. And then, owned and operated by Hearst Corporation? A. I believe so.

Q. Right.

And when you go on the air every morning and you sign off every evening, you go on the air with the announcement that WBAL is, "owned and operated," by The Hearst Corporation? A. That's correct.

Q. That's correct? A. Yes.

Q. All right.

Now, why do you make that announcement, owned and operated by Hearst Corporation? A. It's required in the communications law.

Q. Well, it's required that you announce who owns and operates? A. That's correct.

Q. And it is The Hearst Corporation that owns and (28) operates? A. That's correct.

Q. Now, in addition, you also hold out to the public in several different ways that you are either affiliated with the News American, have direct lines to the News American, a News American station, in a variety of different ways, isn't that so? A. Not all of the ways that you mentioned.

Q. Which, which way don't you do, you do say direct lines to the News American? A. That's not the — quite the complete phrase.

We say, direct lines to the News American and NBC.

Q. All right.

Now, what direct lines do you have to the News American? A. Telephone lines.

Q. Direct telephone lines? A. No. Lines through the phone company.

Q. And what do you use them for? A. Nothing.

Q. I see.

In other words, now, you have direct lines to NBC? A. Yes.

Q. And what do you use them for? (29) A. To get news.

(The Court) Wait a minute.

Well, when you say you've got direct lines to NBC, what do you mean by that, is that through the ordinary telephone communication?

(The Witness) No.

(The Court) Sir?

(The Witness) Special lease circuits that the NBC network provides.

(The Court) And you don't have such with the News American?

(The Witness) That's correct.

By Mr. Rubenstein:

Q. And you do, in fact, then obtain through direct lines with NBC, news services from NBC? A. That's correct.

Q. Right.

And you hold out to the public that you have both these services from NBC and from the News American, is that correct? A. Yes. At one time we tried to set up an exchange of news, but the competitive aspect that existed between the City Room of the News American and the television station was such that it didn't work, and it collapsed.

Q. Now, as a matter of fact, there was, as recently (30) as, say, two years ago, set up with the News American reporters when they turned in stories, made carbon copies of the stories turned in to the papers, and they were distributed to the WBAL and made available to WBAL, are you familiar with that? A. Such an arrangement, I don't know that it was two years ago.

Q. Well, there was such an arrangement? A. Such an arrangement was attempted. It never functioned properly.

Q. Well—

(The Court) You mean, carbon copies of news stories in the News American were sent to the TV?

(Mr. Rubenstein) To radio and TV, yes, sir.

(The Witness) They weren't sent to TV, there was a spindle in the City Room of the News American on which they were put and, presumably, one of our reporters would go down and pick them off the spindle.

However, he rarely found anything on the spindle, and so, he stopped going.

By Mr. Rubenstein:

Q. All right.

Well, what you're saying is that there was an attempt made to coordinate the news services between the News

American and WBAL and for one reason or another that (31) attempt didn't succeed? A. That's correct, the same as we might make such an arrangement with any other organization.

Q. Like what, like the Sunpapers? A. If they were agreeable.

Q. Well, you would never attempt that? A. Yes, I. would.

Q. Did you ever talk to the Sunpapers about such an arrangement? A. Not that particular arrangement.

Q. Now, who made that arrangement with the News American? A. I believe it was Mr. Mark Collins, the publisher of the paper, and myself.

Q. You and Mr. Collins agreed that it might be helpful to WBAL if the News American reporters made available to WBAL carbon copies of their stories, is that correct, you and Mr. Collins, the publisher of the News American? A. Yes.

Q. Right. A. We attempted such an arrangement.

I repeat, it was highly unsuccessful.

Q. Now, in addition, you also stated, I believe, that you have the sole say as to the labor relations policy, (32) the collective bargaining agreements, and that you do not go to New York, you don't have to go to New York? A. Yes, sir.

Q. Well, I show you, Mr. Gunts, the collective bargaining agreement between American Federation of Television and Radio Artists, AFL-CIO, WBAL Division of The Hearst Corporation, dated the 8th day of September, 1965, which is the most current agreement, the one that just expired, is that correct? A. Yes.

Q. And look at paragraph 14 of that agreement. A. Right, I'm familiar with the paragraph.

Q. You're familiar with the paragraph 14? A. Yes, sir, I'm familiar with every paragraph.

Q. All right.

(Shown to counsel.)

(Mr. Rubenstein) Now, if Your Honor please, this is our sole copy and it's the signed original copy, we would like to read the paragraph into the record.

Paragraph 14 says:

Approval.

This agreement is subject to consideration and approval by the National Board of AFTRA and by The Hearst Corporation and shall not become binding and effective upon either party of this agreement until it has been counter- (33) signed by the National Executive Secretary of AFTRA and the appropriate executive of The Hearst Corporation.

And then it has been, in fact, countersigned by an executive of The Hearst Corporation.

By Mr. Rubenstein:

Q. Is that correct, Mr. Gunts? A. I can't see the signature from here, Mr. Rubenstein.

Q. Well, all right.

At the bottom, it says what? A. Mr. Provost.

Q. Right. A. Radio-TV Division of The Hearst Corporation.

Q. Right.

Approved, Radio-TV Division of The Hearst Corporation by— A. D. L. Provost, P-r-o-v-o-s-t.

Q. And who was Mr. Provost? A. Mr. Provost was the head of the Radio and Television Division of The Hearst Corporation until it was dissolved two years ago.

Q. I see.

Q. So the labor relations, then, your agreement did, in fact, have to be approved by The Hearst Corporation?
A. Would you repeat the question?

(34) Q. I say, your collective bargaining agreements did, the agreements that expired September, 1968, had to be approved by The Hearst Corporation?

(Mr. Nelligan) Objection.

(The Court) The reason?

(Mr. Nelligan) It doesn't precisely quote the material found in there. It says, an executive of The Hearst Corporation.

(The Court) All right.

(Mr. Rubenstein) It says, by The Hearst Corporation, and it's not effective until countersigned by the appropriate executive of The Hearst Corporation.

(The Court) Objection overruled.

(The Witness) Did you say that it did have to or that it does have to?

By Mr. Rubenstein:

Q. Well, are you now stating that since September of 1968 there has been a change? A. No, I'm not stating that.

Q. All right. A. I'm stating that since November of 1966, there has been a change.

Q. I see.

Then prior to November of 1966, WBAL, the labor relations policy of WBAL was subject to the approval of The (35) Hearst Corporation? A. It was subject to the approval of the Radio and Television Division of The Hearst Corporation, which was headed by Mr. Provost.

Q. All right.

Now, Mr. Provost was an executive of The Hearst Corporation, an officer of The Hearst Corporation, as opposed to an officer of a division of The Hearst Corporation, wasn't that so? A. Yes.

Q. All right.

And Mr. Provost represented WBAL on the Board of The Hearst Corporation, did he not? A. He represented WBAL and WISN. He did not represent WTAE, Pittsburgh.

Q. Right.

He represented two of the stations as a member of the Board of The Hearst Corporation? A. I don't know whether he represented them as a member of the Board. He was the head of the Radio and Television Division.

Q. And a member of the Board of The Hearst Corporation. A. He was a member of the Board.

Q. And in addition to that, Mr. Provost had an office (36) in Baltimore, didn't he? A. That's correct.

Q. And Mr. Provost had the final authority as to the labor relations policy to be followed by WBAL during the time that he was— A. Correct.

Q. Is that correct? A. That's correct.

Q. Now, I believe you mentioned that there are certain fringe benefits that are available to employees of WBAL.

There is, and I think you mentioned, a retirement plan, there is a Hearst Corporation—

(Shown to counsel.)

Q. A Hearst Corporation retirement plan, is that correct, that is available for AFTRA employees, this booklet? A. This doesn't appear to be available to AFTRA employees.

Q. Well, let me show you a letter over your signature, yours and Mr. Burk's signature, dated October 17th, 1967, to a Mrs. Ann Hoffman, and Mrs. Hoffman is a member of AFTRA and a member of the Union? A. Not when that letter was written, she was not.

Q. All right. A. She just became a member.

(37) Q. She just became a member? A. That's correct, right.

Q. Right.

And what does the first paragraph of that letter to Mrs. Hoffman say? A. I am happy to be able to advise you that The Hearst Corporation has initiated two outstanding programs for your benefit and your family. These programs concretely demonstrate the strong interest which The Hearst Corporation has in continuing to maintain and to enhance benefits for you.

Q. All right.

Now, one of the programs was a retirement benefit? A. That's correct.

Q. Right.

And is not this retirement benefit available to employees of The Hearst Corporation regardless of where they are employed? A. To the best of my knowledge, if they are not represented by a collective bargaining agent, it is.

Q. Well, I understand, but that's— A. At the time the letter was written to Miss Hoffman, she was not a member of a Union.

Q. That's correct, because that Union was just organized this year for her? (38) A. Correct.

Q. For the unit which she was in.

Now, in addition to that, Mrs. Hoffman and other employees of the News American had available to them a salary continuation plan? A. I can't give you any information about the News American.

Q. Well, your WBAL had a salary continuation plan, is that correct, a Hearst salary continuation plan? A. There are two such plans.

Q. They are Hearst Corporation plans? A. One of them is a Hearst Corporation plan, one is a Broadcast Division of The Hearst Corporation plan.

(Shown to counsel.)

By Mr. Rubenstein:

Q. Now, this is a certificate of insurance effective June 1, 1967, issued, again, to Mrs. Hoffman, and a booklet that came to Mrs. Hoffman at the same time.

Are you familiar with that? A. What was the question?

Q. Are you familiar with that plan? A. Yes.

Q. All right.

And that plan covers The Hearst Corporation and its designated subsidiary or affiliated companies, is that (39) correct? A. Yes, sir.

Q. And there is no mention either in the certificate of insurance or in the booklet that came with it of WBAL or Radio and TV Division, or anything of that kind, is that correct? A. That's correct.

Q. And this, as I see in the booklet itself, is available, it says, to employees other than those who are not covered, temporary employees, and other employees not covered by The Hearst Corporation retirement plan? A. Yes.

Q. So, in a sense, it's coexistent with the— A. It was implemented as a part of it.

Q. Right.

Now, did you have anything to do with the setting up of this salary continuation plan, or the pension plan? A. We were asked if we wanted to participate.

Q. In other words, the participation in this plan is voluntary? A. Yes.

Q. And it's voluntary on the part of the employees as well as on the part of the station, or was it?

Is it voluntary on the part of the employees as well as on the station?

(40) In other words, could Mrs. Hoffman have rejected going into the plan if she had so desired? A. I assume she could.

I don't know that we ever had such a request.

Q. Well— A. Do you mean, does she have to be covered if she doesn't want to?

Q. Yes, if she had determined that she did not want to be covered. A. I'm sure we could take her name off the list if she didn't want to be covered.

Q. All right.

Now, incidentally, who pays the cost of the plan? A. The division.

Q. Well, now, I call your attention to, again, this letter of October 17th, 1967, to Mrs. Hoffman, fourth paragraph. A. Ahuh.

Q. What does it say? A. It says, the entire cost of both programs will be borne by The Hearst Corporation.

Q. Does WBAL maintain any other pension plan, that is, a pension plan that is not a Hearst Corporation pension plan? A. The Broadcast Division plan.

(41) Q. There is a plan — in other words, there are two plans that cover WBAL employee plans, one, they both are Hearst Corporation plans, one is available only to the radio and television personnel in Baltimore, Milwaukee, Pittsburgh, is that correct, and perhaps, Puerto Rico? A. Right.

Q. And the other plan is available to all Hearst Corporation employees? A. I only know that it's available to WBAL-TV.

Q. In addition to the pension pain and the salary continuation plan, you also have a life insurance plan, is there not a life insurance plan that is a Hearst Corporation life insurance, available to all employees? A. No, it's not available to all employees.

Q. What employees is it available to? A. Non-Union employees.

Q. To all non-Union employees of The Hearst Company?
A. I don't know about that, I only know it's available to the non-Union employees of WBAL-TV.

Q. Well, you know that the plan, however, is broader than WBAL? A. Yes.

Q. Right. A. But I only know of its application to WBAL-TV.

Q. Now, I show you a—

(42) (Shown to counsel.)

By Mr. Rubenstein:

Q. Incidentally, WBAL used to be part of a company, did it not, known as Hearst Consolidated Publications, Inc.? A. Not to my knowledge.

Q. Not to your knowledge.

Well, now, I show you a policy issued to a Neal J. Friedman on January 30th, 1964.

Is Mr. Friedman an employee of the WBAL Division?
A. Is he an employee?

Q. Was he then in 1964? A. Yes, he was then.

Q. All right.

Now, this policy is made out to Mr. Friedman as an employee of Hearst Consolidated Publications, Inc., or an associated corporation. A. That's what it says.

Q. Right.

And the associated corporations are listed on the back of this policy, or the front of it, I don't know which, one of them which is WBAL Division of The Hearst Corporation, is that correct? A. That's what it says.

Q. And one of them is The Hearst Corporation, and
(43) so on.

Now, are you familiar with this insurance policy? A. Yes.

Q. And this insurance policy, I assume, then, is available to all of the companies that are listed on the back of this?

A. It would seem to be so.

Q. Right.

And that would include, would it not, the News American? A. I don't know, does it say that there?

Q. Well, it says The Hearst Corporation. A. Well, I don't know.

Q. All right. A. If it doesn't say it, I don't know.

(Mr. Doyle) If the Court please, I would like to ask Mr. Rubenstein to introduce that into evidence because the News American is not mentioned in any way on that policy.

(Mr. Rubenstein) No, the News American is not mentioned, it says. Boston Record American and Sunday Advertiser Division of The Hearst Corporation, Capital Newspapers Division of The Hearst Corporation, Hearst Advertising Service, Inc., Hearst Enterprises, Inc., Hearst Publishing Company, Inc., Los Angeles Herald Examiner Division (44) Hearst Publishing Company, Inc., New York Journal American Division Hearst Consolidated Publications, Inc., New York Mirror Division of Hearst Corporation, San Antonio Light Division of Hearst Consolidated Publications, Inc., Seattle Post Intelligencer Division Hearst Publishing Company, Inc., Sunical Land and Livestock Division of The Hearst Corporation, The Hearst Corporation, WBAL Division of The Hearst Corporation.

And that is what it says.

By Mr. Rubenstein:

Q. Now, you also were questioned with regard to labor relations policy about counsel, and you indicated that the WBAL Division retains the law offices of Sherbow, Shea and Doyle.

Are you also familiar with the fact that Sherbow, Shea and Doyle represent the other Hearst interests in this city, the News American? A. Am I familiar with that?

Q. Yes. A. Yes, I am aware of the fact.

Q. And are you familiar with the fact that counsel, prior to Sherbow, Shea and Doyle, also happened to be counsel for the News American as well as the WBAL Division? A. I'm not aware of that. I know nothing about it.

(45) Q. Are you familiar with the New York office of Lipton, Brennan and Wasserstrom? A. I know they exist.

Q. And they are available to you? A. I assume so.

Q. And they are the Hearst labor relations counsel office? A. I don't know whether that's what they are, or not.

Q. Well, they also represent, do they not, the News American in labor relations matters? A. I don't know whether they do, or not.

Q. All right.

You also have available, you mentioned the fact that there are certain personnel of the News American that you hire on a contract basis, and, incidentally, that would be the same basis on which you would pay your own reporters; for example, if Mr. Tom White appears on Maryland News Conference and Neal Friedman, let's say, appears on Maryland News Conference, they receive the same sum, is that correct? A. That's correct.

Q. Right.

Mr. Friedman is a reporter for WBAL? A. That's correct.

(46) Q. Right.

And Mr. White is the Managing Editor of the News American? A. That's correct.

Q. Now, in addition, there are certain other exchanges.

For example, Mollie Martin.

Now, Mollie Martin is a name owned by The Hearst Corporation, is it not? A. I don't know.

Q. You don't know? A. No.

Q. Well, do you know that Mollie Martin appears on WBAL? A. Not on WBAL-TV.

Q. No, no. WBAL-Radio. A. I don't know anything about her relationship with WBAL-Radio.

Q. All right, fine.

Now, who is Mr. Clifton Harris?

(The Court) Who is who?

(Mr. Rubenstein) Mr. Clifton Harris, who is identified in some of this correspondence as Resident Controller.

(47) By Mr. Rubenstein:

Q. What is the Resident Controller? A. He is the man in charge of our accounting and business operations at WBAL.

Q. All right.

And Mr. Harris is a Hearst Corporation employee, is he not? A. He's an employee of the WBAL Division of The Hearst Corporation.

Q. Solely? A. I beg your pardon?

Q. Solely an employee of WBAL? A. I don't understand your question.

Q. Well, does not Mr. Harris get paid in all or in part directly from The Hearst Corporation? A. He does not get paid in any part by The Hearst Corporation. He is paid by the WBAL Division of The Hearst Corporation.

Q. And who does— A. In total and in every respect.

Q. Who does Mr. Harris report to? A. He reports to me.

Q. Solely to you? A. Yes.

Q. Has no responsibility to anybody other than to (48) you? A. You mean, am I his employer?

Q. Yes. A. Yes, I'm his employer.

Q. That's what I mean, you have the right to, you know, hire and fire him? A. Yes.

Q. And he reports solely to you? A. And to Mr. Burk.

Q. And to Mr. Burk, yes. A. Correct.

Q. Are there any employees who report in whole or in part to The Hearst Corporation other than you and Mr. Burk, rather than to you and Mr. Burk, do you understand the question? A. You mean, employees of the WBAL Division?

Q. Well, people who are working out of the WBAL Division? A. Are there any who report to The Hearst Corporation?

Q. Yes. A. No.

Q. Or who are paid by The Hearst Corporation? A. No.

Q. There are no employees? A. No.

(49) Q. Or no persons on the premises? A. No.

Q. Is this true of Mr. Wilner, the Engineer? A. Mr. Wilner is paid by the WBAL Division.

Q. Now, the WBAL Division, I believe you stated that you submit a budget to New York? A. That's correct.

Q. Now, that budget, of course, has to be approved by New York? A. No.

Q. It does not.

Are you saying that you have the complete authority to tell them, to tell New York, that this is what my budget is for next year, period? A. I can only tell you—

Q. And they have no authority to come in and say, now, wait a minute, you know, you're way out of line? A. It

would be incorrect to say that they don't have the authority to do it.

In nine years and eight months that I have been with the corporation, there has never been any such authority exercised.

Q. All right.

Now, has there been any consultation with respect to expenditures? (50) A. No, sir, other than the capital expenditures.

Q. Now, capital expenditures, I believe you stated, that you had to get approval? A. No, they're referred—

Q. Over \$10,000.00? A. They're referred to New York for review.

Q. Right.

Now, you stated that in the course of your handling labor relations for the company that you have no contact with New York, that you never talk to anybody from New York.

Now, when you say that, you are now talking about the current negotiations, you were not talking about anything that happened before September of 1968, isn't that so? A. No, that's not so.

Q. Well, we've already established that when you negotiated your previous contract with AFTRA, you had to get approval of New York, that Mr. Provost was physically on the premises and had to countersign it, and he had the right of approval or not of approval. A. You are referring to different times.

I said that Mr. Provost's office ceased to exist in November of 1966.

Q. Now, are you saying that since November of 1966 (51) you had no contact at all with New York concerning any aspect of labor relations policy? A. That's correct.

Q. And New York has never called you, for example, you have a strike here, nobody from New York has ever expressed any interest in the fact that you have a strike here, that the News American may be shut down as the result of the strike that you have, or find out what it's all about? A. No, they have not.

Q. They have not at all? A. No, they have not.

Q. And you have not informed anybody in New York of any aspect of this dispute? A. Mr. Burk and I called Mr. Massey in a conference telephone call the first Tuesday, I believe, that AFTRA put its so-called informational picket line around the News American and advised him that, one, we had an AFTRA strike going on and that, two, we had been advised by our attorneys that there was an informational picket line at the News American, that the News American was, apparently, going to lose two editions.

We thought he should be aware of the situation.

Q. I see.

And nobody from the News American called you to find out about it? (52) A. No.

Q. At all? A. No.

Q. Never spoke to Mr. Collins? A. No.

Q. Or to anyone? A. No.

Q. The contact was through your attorney? A. Our attorneys advised us of what was going on, I don't know who contacted them.

Q. I see.

You don't know the fact that they were the same attorneys for the— A. Yes, I know that we employ the same attorneys.

Q. Mr. Gunts, you have been in the negotiations? A. Yes, sir.

Q. I mean, you are for the television station the chief negotiator? A. Yes, sir.

Q. Right.

And you are then familiar with the proposals that have gone back and forth, and I am now talking about the noneconomic proposals as well as the economic? A. I think I'm relatively familiar.

Q. I do not mean to get involved into the dispute (53) itself.

Now, the clause which was in the previous agreement—
(The Court) Number 14?

(Mr. Rubenstein) Paragraph 14, the approval.

By Mr. Rubenstein:

Q. Was still contained in the various drafts that were submitted, the proposed agreements, isn't that so? A. I really can't tell you at this point as regards the particular paragraph.

Q. Well, do you recall— A. There is no need for it, if that's your question.

Q. Yes, but you never expressed that to the Union, there has never been any discussion, has there been, that the clause that is contained in the former agreement and which is contained in the drafts that have been submitted back and forth during the proposals, that it should be eliminated? A. I don't think there has been any discussion on the clause, to the best of my knowledge, one way or the other.

Q. Well, you do know that the clause is still in the various drafts that are before the parties? A. We hadn't gotten that far in the negotiations.

Q. Now, isn't it a fact that when the Union submitted a proposal and a complete draft of a proposed agreement, that you went through every clause and indicated to them (54) which clauses you objected to, which clauses you

wanted changed, your attorney did this, that every clause has been either discussed or passed over as being noncontroversial? A. I think, in the main, we proceeded from a new draft of a contract—

Q. Right. A. —submitted by AFTRA and it has been intermixed between the new and the old.

Q. Well, I show you, for example, the new draft, or one of the drafts that was submitted to you by AFTRA.

Are you familiar with this, is that one of the drafts that was submitted by AFTRA? A. I've seen this.

Q. Right.

And 18, which is marked in pencil, as the previous 14 on the AFTRA draft, is the same clause, is that correct, that was in the previous agreement? A. You would have to show me the other clause, I think it's the same clause.

Q. All right, I'll show you the other clause. A. It appears to be the same.

Q. All right, and there was no — or there has not been to this point any discussion or objection? A. I don't recall that we have ever gotten to that clause.

(55) Q. Are you, in addition to — strike that.

Do you hold personally any office in The Hearst Corporation? A. I'm a Vice President for WBAL-TV.

Q. Of The Hearst Corporation? A. I'm a Vice President of The Hearst Corporation for WBAL-TV.

Q. For WBAL.

And you represent then the WBAL Division with respect to The Hearst Corporation, is that correct? A. I think that would be a proper—

Q. And, as such, do you sit on the Board? A. No, I do not.

Q. Oh; now, do you know whether Mr. Burk is also a Vice President of The Hearst Corporation for WBAL? A.

I know he has a title of Vice President, I really don't know what his relationship is.

Q. Well, for example, in communications with the FCC, you, Mr. Gunts, sign The Hearst Corporation by Brent O. Gunts, isn't that so, Vice President? A. I sign WBAL-TV, The Hearst Corporation, normally.

(Mr. Rubenstein) That's all the questions I have.

(56) REDIRECT EXAMINATION

By Mr. Nelligan:

Q. Mr. Gunts, going back to this carbon copy of news copy by the News American that was put on spindles in the event that the reporter from WBAL-TV wished to utilize it.

How long ago did that happen that that effort was made, approximately? A. I think it was in the area of three years ago.

Q. Has there been any similar attempt since that time to interchange news? A. No.

Q. With respect to the various plans that Mr. Rubenstein has questioned you about, the salary continuation plan, the pension plan; are these plans in which the local management decides, or not decides, if they would be made available to employees at each property? A. This was the advice we were given by The Hearst Corporation, that we had the option to accept them, or not accept them, because we had to pay for them.

Q. All right, that's my next question.

(The Court) When you say you had to pay for them, do you mean that ~~clase~~ in there as to paid for entirely by The Hearst Corporation, meant that WBAL-TV and Radio had to put the money up in reference to their employees?

(The Witness) The original funding of the plan was (57) completely absorbed by The Hearst Corporation.

The annual operating expenses of the plans are a part of the division expenses.

(Mr. Doyle) If it please the Court, may I have permission to ask one or two questions on redirect of the witness?

(The Court) Any objection?

(Mr. Rubenstein) I have no objection.

(Mr. Doyle) Thank you, sir.

(The Court) All right.

By Mr. Doyle:

Q. Mr. Gunts, you were employed by the WBAL Division of The Hearst Corporation prior to Mr. — to the retirement of Mr. Provost, were you not? A. Yes, sir.

Q. Will you please describe the functioning of the WBAL Division, the radio and television division, generally, under Mr. Provost's direction? A. Mr. Provost, at that time, was my immediate superior and all of the activities regarding the station would have been handled through him in going to the headquarters of The Hearst Corporation.

Q. He was, in effect, your contact with The Hearst Corporation? A. That's correct.

(58) Q. Now, upon his retirement, what, if any, changes took place in the functioning and the responsibilities assigned to you? A. I was called to New York upon his retirement and Mr. Berlin and Mr. Markuson, who, at that time, was the Executive Vice President of the corporation, advised me that I would now report directly to them.

Q. Did he give you any instructions as to how you were to function? A. He said, go back to Baltimore and operate WBAL-TV as if it was your own business, if you're in New York, please stop in to see us.

Q. In connection with paragraph 14, therefore, since November, 1966, if that paragraph were applicable today, who would give consideration and approval of the contract by The Hearst Corporation? A. It would have to be either the Executive Vice President or the President.

Q. Would you have the authority here? A. I have the authority here.

(The Court) To do what, now?

You have the authority here to sign the contract?

(The Witness) To conclude the contract without reference to New York.

(59) (Mr. Doyle) That's what I was going to ask.

By Mr. Doyle:

Q. And when the contract is concluded, for whom will it be signed by Hearst? A. Will it be signed by Hearst?

Q. For whom, or by whom will it be signed? A. It will be signed by me.

(Mr. Doyle) That's all.

RECROSS EXAMINATION

By Mr. Rubenstein:

Q. I would like to have some recross on this last point.

(The Court) All right.

By Mr. Rubenstein:

Q. Is it your testimony, prior to November, 1966, the ultimate authority in Baltimore was Mr. Provost? A. Correct.

Q. The Hearst Corporation representative.

That after November of 1966, you were called to New York and you were told, well, now, Mr. Provost retired and we're going to do it this way, which is the way now that you would be given the authority.

Now, isn't it true, Mr. Gunts, that tomorrow Mr. Berlin could call you to New York and say, we're going to have Mr. Smith down here, who is going to exercise the (60)

authority on the station on behalf of The Hearst Corporation? A. I don't understand your question.

Q. Well— A. Isn't it true—

Q. Isn't it true that Mr. Berlin and the Executive Vice President of The Hearst Company, those who called you to New York in November of 1966 and gave you the authority about which you've testified, could call you to New York tomorrow and take that authority away from you and operate it as it was operated prior to November, 1966? A. I assume he has this right, if he could call me once, he could call me again.

* * * * *

(61) BRENT GUNTS,

resumed the witness stand, and having been previously sworn, testified further as follows:

(The Clerk) Just be seated, Mr. Gunts, you are still under oath, sir.

FURTHER REDIRECT EXAMINATION

By Mr. Nelligan:

Q. Mr. Gunts, I show you a pamphlet entitled Group Insurance Program, WBAL, at the top.

Would you identify that, please, for us? A. This is a description of the WBAL Division, Health and Hospital Plan, the Major Medical and the Blue Cross Plan.

Q. Currently in existence? A. Currently in existence.

Q. And how did that come to be? A. It was set up by our division through Tongue Brooks with the Monumental Life Insurance Company and the Maryland Blue Cross and Blue Shield.

Q. And how is it financed? A. By the WBAL Division.

Q. Now, was any consideration given to any other program? A. There is a Hearst Health and Hospital Plan

which (62) was given consideration, but which we didn't feel was quite rich enough for what we wanted in our division, and we rejected that plan and set this plan up on our own.

Q. All right.

When did that happen, approximately? A. A year and a half, two years ago.

(Mr. Nelligan) Thank you, I see.

No further questions.

FURTHER RECROSS EXAMINATION

By Mr. Rubenstein:

Q. Who is covered by that plan, Mr. Gunts? A. All of the personnel working in the WBAL Division.

Q. Whether they are Union or not? A. That's correct.

Q. And whereas the Hearst plans are available by the nature of the plans only for non-Union personnel? A. No, not the Health and Hospital Plans.

Q. No, I'm — the Health and Hospital Plan is not, you say, available— A. Is not.

Q. —only for— A. Would you repeat the question?

Q. The Hearst Health Plan that you rejected, isn't that available to employees on the same basis as the retirement plan and the salary continuation plan? (63) A. No, sir.

Q. Are you sure of that? A. Yes, sir.

* * * * *

(67)

ALFRED BURK,

was called as a witness for and on behalf of the Plaintiff, and, having been first duly sworn, testified as follows:

(The Clerk) Give your name, sir.

(The Witness) Alfred Burk.

(The Clerk) Alfred Burk?

(The Witness) B-u-r-k.

(The Clerk) B-u-r-k.

DIRECT EXAMINATION

By Mr. Nelligan:

Q. By whom are you employed, Mr. Burk? A. Employed by The Hearst Corporation.

(The Clerk) Can you hear the witness?

By Mr. Nelligan:

Q. The division? A. WBAL Division of The Hearst Corporation.

Q. In what capacity? A. General Manager of WBAL-AM and FM Radio Stations.

Q. And for how long have you operated in that capacity? (68) A. Approximately four years as General Manager.

Q. Now, were you present here this morning when Mr. Gunts testified? A. Yes, I was.

Q. And you heard his testimony on his direct examination, at least, with respect to the areas of his responsibility and authority and the relationships that exist vis-a-vis his division and The Hearst Corporation in New York, and also his division and sister divisions, and you have also heard him testify on direct examination concerning his responsibility for the formulation and determination of management policies and labor relations policies.

Now, to what extent does that testimony describe the situation at WBAL-Radio in all those aspects? A. It is the same.

Q. So that if I were to ask you all those same questions that I asked Mr. Gunts, you would testify in substantially the same manner without significant variation? A. That is correct.

Q. Now, there are several additional items that I want to ask you about, Mr. Burk.

Do you recall a conversation that you had with Mr. Markuson and Mr. Collins, I believe it was in New York, regarding a difference of opinion between your division and the News American on promotional advertising? (69) A. Yes. I do.

Q. When, approximately, did that take place? A. I would say about a year and a half, give or take a few months.

Q. All right, tell us what it was all about. A. Mr. Collins and I were having an altercation, a disagreement, over the value of spots placed on the station in behalf of the News American and as compared to the spots on the station being utilized by the Sunpapers.

The situation was unded discussion for a period of some weeks without any give being had by either Mr. Collins or myself.

Then when I purchased a campaign in the Sunpaper weekly to run on an alternate basis with a similar campaign in the News American weekly, the discussion heated up somewhat to the degree that I suggested to Mr. Collins that we go to New York and let them, agree to live with whatever decision in this matter that Mr. Markuson would come up with, because we had not been able to agree at any point.

As a consequence to this, an appointment was made with Mr. Markuson and Mr. Collins and I did go to New York and met with him.

At that meeting, we discussed the ramifications of the whole situation, and at what seemed to be the conclusion of the meeting, Mr. Markuson said, and I quote, (70) he said, Gentlemen, I'm not convinced that the real element of the problem has presented itself here, there is something here beyond the considerations that have come up, I indicated that I agreed. He said, I thought so. He said, would you care to state what the real problem is?

The conversation was a bit spirited, a bit heated, and I declared that the crux of the situation boiled down simply as to who was running WBAL, me or Mark Collins.

Mr. Markuson said, I thought so, and he said, I intend to straighten that out once and for all, and he immediately proceeded to address Mr. Collins where he told Mr. Collins to stay completely and totally out of "Al Burk's radio station" and then turned to me and told me to stay out of the News American operation, and he told Mr. Collins if he wanted anything from the radio station he would buy it and pay for it like anybody else, and he told me that if I had occasion to use the facilities of the newspaper that I would have to buy them on the same basis of anyone else, and the meeting broke up.

Q. Now, do you recall another conversation between you and Mr. Markuson with respect to the pension plan system or the institution of it? A. Yes.

Q. Will you tell us approximately when that was? A. I would say that that was about late spring of (71) 1967, about a year and a half ago.

Q. All right.

Now, what was the contents of that conversation? A. We were at New York to discuss the proposed pension plan, and as we broke up for lunch, all of us went to the New York Athletic Club for lunch, and I happened to be sitting beside Mr. Markuson at the time, and in the table conversation that ensued. I posed a question about paying for the pension plan.

I, too, am paid on a base and a percentage of the profits and my concern and my interest was, since we were giving the plan to our employees, why did I have to take \$2,000.00 out of the money to fund—

(The Court) Out of what?

(The Witness) Out of my own pocket.

(The Court) To fund?

(The Witness) Yes, in other words, it would run my costs up and I would — I was hoping that Hearst would pay for it, but they wouldn't do it, and the answer was to the query, which Mr. Markuson made very clear to all present, was that if I didn't want the pension plan for WBAL-Radio, I didn't have to take it.

He pointed out that if Mr. Gunts wanted the pension plan for WBAL-Television, he could take it, or he, too, could decline to take it, even if I wanted it.

(72) But, in any event, whether I took it, or whether Gunts took it, or whether, vice versa, he made it very clear that in each case we would have to live with the consequences of it, good or bad, and that he didn't want anybody crying on his shoulder if things didn't go right as a result of that decision.

(Mr. Nelligan) That's all.

CROSS EXAMINATION

By Mr. Rubenstein:

Q. Mr. Burk, do you know how the license of WBAL is held, that is, who is the licensee with the FCC? A. I couldn't hear you.

Q. The licensee? A. WBAL-AM, FM.

Q. Well, isn't it The Hearst Corporation? A. I believe in the front of the license it calls for the call letters of the station.

Q. Yes. A. I recollect that it is referred to as WBAL.

Q. Well, you have the call letters of the station, of course, on the license, but the licensee is The Hearst Corporation? A. I would presume so.

Q. Well, don't you know, I mean, you have correspondence with the FCC on a regular basis? (73) A. Well, I signed the last license myself, I have it in my bag, but I don't know.

Q. And you signed it, Alfred E. Burk, Vice President for WBAL-Radio? A. That's correct.

Q. The Hearst Corporation? A. Yes, sir.

Q. That's exactly the way you signed it, right? A. Yes.

Q. And the application, and so on, for the license is The Hearst Corporation by Alfred Burk, title, Vice President for WBAL-Radio? A. It would seem so.

Q. And, as a matter of fact, in a question that you answered, that question on the FCC application, it is, other businesses in which applicant or any officer, director, or principal stockholder has a 25 per cent or more interest, and your answer, signed by you was, the applicant either owns, or controls through ownership of subsidiaries, all the businesses of the Hearst organization. It is not believed that the question contemplates the furnishing of detailed information concerning all these businesses since they have one common ownership in The Hearst Corporation, is that correct? A. It sounds like what I'm familiar with, yes.

(74) Q. Right. Okay.

Now, this dispute about what you testified—

(The Court) Which one?

(Mr. Rubenstein) The one with Mr. Collins.

By Mr. Rubenstein:

Q. This dispute was settled by going to New York and the Executive Vice President of The Hearst Corporation settled it? A. That's correct.

Q. Right.

And you were also informed, I believe, when there was discussion about the pension plan, that he said, well, you or Mr. Gunts could take it or leave it, but whatever you did, you had to take the consequences of it? A. That's correct.

Q. I think that's what you said.

All right.

Now, actually, the dispute between you and Mr. Collins on the spots, didn't it grow out of the fact that the advertising of WBAL in the News American, and the advertising of the News American on WBAL, is on an offset basis; in other words no money changes hands, it's on an offset basis?

A. Part of it is what we refer to as trade advertising, but the elements of trade are cash and we work off our respective rates, the News American pays our rate the same as (75) any other advertiser, and to the best of my knowledge, we pay the same rate that other advertisers pay the newspaper.

Q. Well, the point is, do you pay cash or do you just trade spots with each other, so to speak? A. We don't — we keep running balances of the amounts used on the respective paper and the station.

I don't know what would happen if the balances were different, but I would presume that I would have to pay for any lineage that I used in cash over and above that which they had utilized on the station, and vice versa.

Q. But, in fact, no cash does change hands, it balances out? A. Yes.

Q. You run a certain amount in the News, they run a certain number of spots, and at the end of some period of time it balances out and no cash changes hands? A. It is an accounting procedure based on the—

Q. Right. A. —rate values of each respective—

Q. Right, and an accounting procedure.

And, of course, what Mr. Collins was complaining about was that the Sunpapers had come in and purchased spots that were more desirable than the spots, or at least in his opinion, more desirable than the spots that you were furnishing to the News American on this trade balance deal, isn't (76) that what he was complaining about? A. That was partly it.

Q. Right.

And he felt that since you were sister organizations that you should not have sold those spots to the Sunpapers?

A. No, I don't think that's quite correct.

The spots that Mr. Collins was utilizing on the station were the spots that he had selected originally and were the best that we had.

Q. When The Hearst Corporation had a resident, so to speak, Mr. Provost, on the premises, was his relationship to you as described by Mr. Gunts? A. Yes, it was.

Q. And in November of 1966, there was a change made in that relationship by Mr. Berlin and Mr. Markuson? A. There was a change, yes.

Q. Now, do you have the same control, let's say, over your operation that Mr. Gunts testified he has over the TV? A. Yes.

Q. Such as the right to bargain collectively and reach an agreement on, for example, salaries of announcers that — without any regard to what WBAL-TV pays announcers? A. That's correct.

(77) Q. And yet, up until this point, you have had the same contract, there had been one contract? A. What contract are you speaking of?

Q. Well, the contract with AFTRA, for example, was signed by — on behalf of the WBAL Division, Hearst Corporation, was signed by you and signed by Mr. Gunts, and it was one agreement, is that correct? A. That's correct.

Q. And you both signed it on behalf of WBAL Division, The Hearst Corporation? A. That is correct.

Q. And it also contained the clause which we have read into the record on approval.

Now, are you in this current negotiations, also? A. Yes.

Q. All right.

And has not this approval clause remained in the proposals without comment on your part? A. I don't even recall it being discussed.

Q. That's what I mean.

It never was discussed even, I agree with you.

I just want to ask you one more question.

To come back to your testimony on direct examination, would this normally be the way in which disputes that might arise between the operation at WBAL and the (78) operation of the News American be settled, that is, by you and the publisher going to New York and settling the dispute? A. The only time it ever happened was that once, I have never given it any thought.

I think that it was my suggestion that we take it to New York, but it was academic, to have an arbiter, I respect Mr. Collins highly, he understood the situation, and he was understanding of mine.

Q. Now, do you recall when the News American reporters made carbon copies of their stories available for the WBAL news people? A. No, I don't.

Q. You don't recall that? A. No, I don't.

(Mr. Rubenstein) That's all the questions I have.

REDIRECT EXAMINATION

By Mr. Nelligan:

Q. Mr. Burk, the radio operation has its own news gathering reporters, does it not? A. Yes.

(The Court) Separate from the TV?

(The Witness) Yes, sir.

(79) By Mr. Nelligan:

Q. Separate from not only TV, but also News American? A. Right.

Q. You testified in answer to Mr. Rubenstein's question that there was a change in 1966 following the retirement or death of Mr. Provost, what change was that exactly? A. The change was that after Mr. Provost's retirement, I was

called in to New York and met with Mr. Markuson, who was Executive Vice President of Hearst Corporation, and Mr. Berlin, who was President of the corporation, who notified us of the change of Mr. Provost's retirement and outlined the new relationship for us.

Q. All right.

And, briefly, how did he describe how those new relationships would exist? A. His instructions to me were to run WBAL-Radio as if I owned the business, as if it were mine.

By Mr. Doyle:

Q. Mr. Burk, the trade deal that you described that exists between you and the News American, is a trade deal of that type unique? A. No, it's very common.

Q. In fact, does WBAL-Radio engage in similar trade deals with other types of media? A. We have similar arrangements with the Donnelly (80) Company for outdoor billboards, with Barbett and Weichart in New York.

It is quite common in the business.

(Mr. Doyle) Thank you.

(Mr. Rubenstein) I have a question or two.

(The Court) All right.

RECROSS EXAMINATION

By Mr. Rubenstein:

Q. You stated, of course, your news gathering department is separate from both the News American and from the TV side, but your collective bargaining unit of news people is one unit with the TV, isn't that correct; in other words, when you had the election earlier this year, your news gathering personnel and the TV news gathering personnel voted as a single unit? A. I understand so, yes.

Q. There was one area that I neglected on direct.

Mollie Martin appears on the radio, does she not? A. She does, yes.

Q. And Mollie Martin is a trade name or a name owned by The Hearst Corporation to cover somebody who performs certain services, is that— A. It is a stage name; to whom the name belongs, I don't know.

Q. Well, it's a name used by the person that appears (81) on radio, a women's news and recipes, and things of that sort, correct? A. Well, she's on FM Radio, she's off AM, but, yes, you're correct.

Q. And the name Mollie Martin is also a column in the News American? A. I believe so.

Q. It's the same name, although it may be different persons, or it may be the same person at any given time, isn't that correct? A. I really don't know, I never have gotten into that aspect at all, because I wasn't concerned about it; as far as I was concerned, she could use any name that she elected to use.

Q. In other words, you were not concerned by the fact that she was using a name that had been well publicized through the columns of the News American, or that the News American was using a name that was well publicized through the radio media? A. No, I was not concerned.

Q. It's just a coincidence? A. Not a coincidence, but — well, I don't understand your question; why should I be concerned about it?

Q. Well, Mollie Martin is, in fact, a name, a stage name, that is owned not by an individual, but by The Hearst (82) Corporation, and is available for the radio and for the newspapers, and anybody else in The Hearst Corporation that wants to use the name, Mollie Martin? A. Whether Mollie Martin's name is owned by The Hearst Corporation, I do not know, I have no idea as to who owns it or how it originated or how long she has had it.

Q. Now, there are other News American personnel who appear on WBAL-Radio, are there not? A. Yes.

Q. Such as John Steadman, Sports Editor of the News American, he also appears on the radio, correct? A. Right.

(Mr. Rubenstein) I have no further questions.

FURTHER REDIRECT EXAMINATION

By Mr. Doyle:

Q. Mr. Burk, who is the person who uses the name, Mollie Martin, do you know her real name? A. Melva Zaal, Z-a-a-l, I believe.

Q. And how long has she used that name, to your knowledge? A. I don't know. Mollie Martin was there when I came with the company, I don't know how long.

Q. Have you ever known any other person to use the name, Mollie Martin, other than the individual you just identified? (83) A. No.

Q. Is it not a fact that the person who writes the column under the pen name of Mollie Martin in the News American is that individual you have just identified? A. To the best of my knowledge.

Q. So far as you're concerned, someone named Zaal uses a performing name of Mollie Martin and has used it over the years. is that correct? A. That is correct.

Q. And you have never known any other individual to use that name other than that person, is that correct? A. No, because I always thought the name belonged to Mollie Martin because she had a beauty shop on Charles Street named Mollie Martin.

Q. You say it belonged to who?

The name, Mollie Martin belonged to who? A. To Melva Zaal. Mollie Martin's name belonged to Melva Zaal, because she went into the beauty shop business and called the beauty shop the Mollie Martin Shop.

(Mr. Doyle) That's all.

(The Court) All right.

(Mr. Doyle) May I ask one more along that line?

(The Court) Yes.

By Mr. Doyle:

Q. Mr. Burk, who pays Mollie Martin for her activities (84) on the FM Radio? A. For FM Radio?

Q. Yes, sir. A. We do.

Q. WBAL Division? A. Yes.

Q. Do you assume any financial responsibility for her activities in connection with the column she writes for the News American? A. None at all.

(Mr. Doyle) All right.

(The Court) Who pays Mr. Steadman, and other people, who appear on the radio?

(The Witness) We do, sir.

(The Court) You do.

(Mr. Slaughter) Your Honor please, I call Mr. Melvin Street.

W. MELVIN STREET,

was called as a witness for and on behalf of the Plaintiff, and, having been first duly sworn, testified as follows:

(The Clerk) Give your name, sir.

(The Witness) W. Melvin Street.

(The Clerk) W. Melvin Street?

(85) (The Witness) S-t-r-e-e-t.

DIRECT EXAMINATION

By Mr. Slaughter:

Q. What is your occupation, Mr. Street? A. I am business manager of the News American.

Q. And how long have you been Business Manager?
A. Since March 20th, 1967.

Q. Prior to March 20, 1967, where were you employed?
A. With the New York State Publishers Association in Syracuse, New York.

Q. How long were you employed there? A. Since February 20th of 1956.

Q. What was your employment prior to 1956? A. Prior to 1956, I was employed by the Baltimore News Post, at that time, as Assistant to the Business Manager.

Q. Assistant to the Business Manager? A. That's right.

Q. Who employed you in 1967? A. Mr. Mark Collins, publisher of the Baltimore News American.

Q. And how did that come about? A. Mr. Collins called me up in my home in Syracuse and asked me if I would be interested in being the Business Manager of the News American.

Q. I presume that you had subsequent negotiations with (86) Collins? A. I had two other conversations with Mr. Collins, yes.

Q. During that time, did any representative of The Hearst Corporation in New York participate? A. No, sir.

Q. Now, Mr. Street, would you review for the Court in as much detail as you can your responsibilities as Business Manager of the News American? A. I negotiate and administer the labor contracts, we have 11 Unions and 14 labor contracts, and I'm directly responsible for the negotiations and the grievances and the administration of the contracts. I sign the contracts on behalf of the Baltimore News American, under the control and supervision of Mark Collins, the publisher.

I also am directly responsible for the Circulation Department, the Advertising Department, the Mechanical Department, and the Accounting Department.

Q. Mr. Street, I show you a list of names of Labor organizations, and I will ask you to read those into the record and tell us what they are, please? A. The Baltimore Newspaper Web Pressmen's Union No. 31, representing our pressman and our paper handlers; Baltimore Stereotype Union No. 10, representing our stereotype employees; Baltimore Mailers Union No. 88, representing (87) our mailers, our bindery workers, and part-time mailers, in three separate contracts; Baltimore Typographical Union No. 12, representing our printers; Baltimore Local 2P of the LP&IU, representing our photo-engravers; Truck Drivers and Helpers Local Union No. 355, representing our teamsters and truck drivers, and our circulation district roadmen; and Circulation Distributors Union 503, representing the District Managers and the street sales representatives; the News Union of Baltimore, representing office personnel, editorial, accounting, classified advertising; Lodge No. 186, District 12, IAM, representing our machinists; Local No. 24, IBEW, representing our electrical workers; Printing Specialties and Paper Products Union 481, representing our porters.

Q. I note that you did not read the name of AFTRA, Baltimore-Washington Local, AFL-CIO. A. No, sir, I did not.

Q. Is it correct to assume then that the News American has no contract with AFTRA? A. Has no contract or no business with AFTRA.

Q. All right.

Now, Mr. Street, directing your attention to the date of September 23rd, 1968, I will ask you if any labor situation occurred at the News American that day which was of an unusual nature? A. Yes, sir.

(88) At approximately 7:00 a.m., I received a phone call from Mr. Charles Duval, who is our supervisor of our building, informing me that there were pickets around our building.

I immediately came down to the building at approximately 8:00 a.m., I witnessed the pickets walking around our building.

Q. All right.

How did these pickets identify themselves? A. The pickets were wearing the sign, I noted the sign on a card here, the sign read, information to the public, radio and TV performers on strike against WBAL, Division of The Hearst Corporation, American Federation of TV and Radio Artists, AFL-CIO.

Q. Where were these pickets walking? A. The pickets were walking on Commerce Street in front of our receiving entrance and the doorway, and also on Pratt Street — Lombard Street, I beg your pardon, Lombard Street.

Q. What is located on Lombard Street? A. The main entrance to the News American, and also our dock, loading dock for the delivery of our newspapers.

Q. What was the effect of the picketing? A. Some of the employees, represented by five of our Unions, refused to cross the picket line and honor their contract, therefore, we could not get out a newspaper as long (89) as those employees refused to report for work.

Q. Now, let me ask you this at this time, does the News American have any dispute with AFTRA? A. No, sir, none whatsoever.

Q. What did you do when you observed these pickets? A. We immediately called the international Unions, or I called the international President of these Unions to ask for their assistance in getting their local Unions and their members to honor their contract and report for work.

(The Court) Now, when you say, the Presidents of these Unions, you mean the Unions you read off a few minutes ago?

(The Witness) The Presidents of three of our craft Unions, the international Presidents.

By Mr. Slaughter:

Q. Which three craft Unions? A. The Pressman's Union, the Stereotypers Union, and the Teamsters Union.

I did not call the international President of the Teamsters Union, I called the local President of the Teamsters Union.

Q. I see.

Now, how long did the picketing last that day? A. The picketing lasted until approximately 11:00 a.m. (90) that morning.

Q. Do you know how they happened to be withdrawn?

A. We were informed by the local Presidents of the Unions that they were withdrawn at their request.

(The Court) At the request—

(The Witness) At the request of the local Union President.

(The Court) Those three?

(The Witness) The local Union, not the international Presidents, I was referring before to the international Presidents I called, the request was made by the local Presidents of the Teamsters Union, the Stereotypers Union, and the Pressmen's Union.

By Mr. Slaughter:

Q. Mr. Street, are there any facilities at all of WBAL-TV or Radio located on or near the premises of the Baltimore News American? A. No, sir.

Q. Are there any personnel employed by WBAL-TV or Radio stationed at the facilities operated by the Baltimore News American? A. No, sir.

Q. As of the 23rd of September, 1968, what knowledge did you have of any dispute between AFTRA, the Respondent Union here, and WBAL-Radio and TV? (91) A. Prior to September 23rd, I only knew what I read in the Sunday paper of September the 22nd.

Q. Now, Mr. Street, I refer you to the date of October 2, 1968, and I will ask you if any labor situation occurred at the News American that day? A. I was informed by Mr. Charles Duval, our superintendent of our force, that the pickets had arrived at our building at 5:00 a.m. He called me at 5:00 a.m. They were there at that time.

Q. Did you personally observe the pickets subsequently? A. I arrived at the News American approximately quarter of six and did observe the pickets at that time.

(Shown to counsel.)

(Mr. Rubenstein) If Your Honor please, you know, we have not denied that they picketed the News American premises and with signs that were as Mr. Street identified.

I don't know that it's necessary to put a lot of pictures into the record. I don't know for what purpose, they are certainly not objectionable on any legal grounds, except that I think the record is unduly cluttered, it's certainly not in issue.

(Mr. Slaughter) Well, would you stipulate that the signs read, American Federation, TV and Radio Artists, Radio and TV—

(Mr. Rubenstein) Performers.

(92) (Mr. Slaughter) Performers, on strike against WBAL Division, The Hearst Corporation.

(Mr. Rubenstein) Right.

(Mr. Slaughter) AFL-CIO.

(Mr. Rubenstein) Right, we would stipulate to that.

(The Court) All right, let the record so show.

(Mr. Slaughter) Would you likewise stipulate that the pickets picketed around the entire premises?

(Mr. Rubenstein) Well, they picketed on — as the witness testified, on Lombard Street and Commerce Street.

* * * * *

(97) Q. Now, Mr. Street, what was the result of the picketing that began on October the 2nd? A. As a result of the picketing, 121 of our employees, represented by five labor Unions, refused to honor their contract and report for work that morning.

Q. And what result did that have on the circulation of the News American? A. The result, it resulted in a reduction from 76 pages in our newspaper that day to 16 pages, a reduction from approximately 225,000 distribution to about 9,000 or 9,500 distribution.

Q. And how long did that situation last? A. It lasted all that day.

(The Court) That's October 2nd?

(The Witness) October 2nd, until approximately 10:30 or quarter to eleven on October the 3rd.

By Mr. Slaughter:

Q. And that was when the matter was settled? A. The line was removed at that time.

(98) Q. By agreement of counsel? A. Yes, sir.

Q. Mr. Street, in the negotiation of your labor contracts, do you engage in any joint negotiations with the management of WBAL-TV — Radio and TV? A. No, sir.

Q. Wait a minute.

In connection with their labor contracts? A. No, sir.

Q. Do they participate in negotiations with the News American in connection with the negotiations with the eleven Unions you have noted? A. No, sir.

Q. As a matter of fact, with whom do you participate in your negotiations with certain of the labor Unions? A. On six of our labor Unions, or contracts, we negotiate jointly with the Sunpapers.

* * * * *

(102) Q. Now, Mr. Street, in the day-to-day operations of the Baltimore News American, or at any other time, is

there any interchange of personnel between the News American and WBAL? A. No, sir.

Q. Who has the responsibility for hiring and firing in the News American organization? A. The department head, subject to my approval, and also the approval of Mark Collins.

Q. In the day-to-day hiring, or in the hiring process, who establishes the policies as to the number of employees needed to operate the newspaper? A. Mark Collins, the publisher of the News American.

Q. Does he have to go to New York, if he wants to increase or decrease employees, for authority to do so? A. No, sir, he has the authority.

Q. In the hiring and firing of personnel employed by (103) the News American, does either Mr. Collins or you have to either touch base with or get approval with New York? A. No, sir, we do not.

Q. Mr. Street, who sets the policies with respect to proposals to labor Unions and final agreement with labor Unions during the course of the negotiations with them by the News American? A. On those six contracts that we negotiate and sign jointly with the Sunpapers, we jointly develop the framework or the policy that we will follow in relation to our negotiations in our contracts and proposals.

Under the remainder of the contracts that we alone have with the Unions, before mentioned, we locally decide and determine exactly what we are going to offer, what we will accept, and what we will put in our contracts.

Q. When you say, we, locally, I assume you mean you and Mr. Collins together with — in consultation with your department head? A. That's right.

Q. Now, in establishing these policies, do you have any contact or any consultation with either Messrs. Gunts or Burk? A. None whatsoever.

Q. What counsel or advice, if any, do you receive from The Hearst Corporation in New York? (104) A. None whatsoever.

Q. It has been testified earlier that there is a law firm in New York which is available for advice with respect to labor relations matters.

Have you ever had occasion to contact that law firm for advice? A. No, sir, I have not.

Q. As a matter of fact, who are the labor relations counsel for the News American in Baltimore; if you need advice, to whom do you turn? A. We would call our local counsel, the Sherbow, Shea and Doyle firm.

Q. All right.

Now, Mr. Street, turning to some of the business operations of the company, what accounting operations does the News American have? A. We have our own accounting system, our own P & L statements, and our own budgets, and our own Accounting Department.

We pay our own bills, receive our own revenues, and handle—

Q. Do you pay taxes? A. We pay taxes.

Q. Out of what account? A. We pay it out of the News American revenues.

(105) Q. Who signs the checks? A. I do.

Q. Do you develop budgets? A. I develop a budget at the beginning of the year and revise it quarterly.

Q. In developing and revising your budgets, what consultation with or advice from The Hearst Corporation in New York do you have? A. None whatsoever.

Q. Who establishes the editorial policy of the News American? A. The Editor, Mr. Sterling Noel, along with his Managing Editor, subject to any veto rights of the publisher.

Q. When you say, of the publisher, who do you mean?
A. Mr. Mark Collins.

Q. I believe the News American runs certain syndicated columns in its paper, either daily or Sunday editions? A. Yes, sir, we do.

Q. Who contracts for those syndicated columns? A. We do, the Baltimore News American does.

Q. What control does The Hearst Corporation exercise over these contracts? A. No control at all.

Q. What is the King Features? (106) A. That's a division of The Hearst Corporation.

Q. What— A. It's a syndicate, it—

Q. What does it provide? A. It distributes syndicated articles by special writers and features.

Q. Does the News American avail itself of these products of King Features? A. Yes, we do.

Q. Where are these services contracted? A. Locally, by the News American.

Q. What is the authority of Mr. Collins and the News American with respect to the use or nonuse of King Features services? A. Complete and absolute, he can decide whether he wants to use them, what he wants to use, or whether he wants to use any of them at all.

Q. What news or wire services does the News American subscribe to? A. We have the Associated Press, the UPI, and their photo services, the Chicago Daily News services, and the London Daily Express service.

Q. Are you familiar with a News Week Magazine service? A. Yes, we also recently subscribed to that.

(107) (The Court) What?

(Mr. Slaughter) News Week.

(The Court) Oh, News Week.

(Mr. Slaughter) Yes, sir.

By Mr. Slaughter:

Q. Now, under whose authority do you subscribe to these services? A. The recommendation of Sterling Noel and the approval of Mark Collins.

Q. Again, are these contracts executed — negotiated and executed locally? A. Yes, sir.

Q. And in so subscribing, to what extent does the News American operate on direction and control of The Hearst Corporation in New York? A. None whatsoever.

Q. What is the Hearst Headline Service? A. That's a division of The Hearst Corporation, it provides national news coverage for Hearst newspapers. We have seven divisions, and the seven divisions receive the services from the Hearst Service.

Q. Under what mandate, if any, is the News American with respect to the use of the Hearst Headline Service? A. No mandate whatsoever.

Q. You can choose it, or not? (108) A. We have the right to decide locally, Mr. Mark Collins has the authority to decide whether or not it is going to be used.

In fact, I believe we use less than 10 per cent of the material sent to us by the headline service.

Q. And, again, do you pay locally for what services you do use? A. Yes, sir, we do.

Q. What is Hearst Enterprises? A. It's an organization that's a division of The Hearst Corporation which purchases newsprint and can be called upon for other purchases when it's decided by the local newspaper division to call upon them to do so.

We, locally, have used them to buy newsprint for us.

(The Court) All right, I think we better take our luncheon recess now.

(Whereupon, at 1:00 o'clock p.m., a luncheon recess was taken until 2:00 o'clock p.m.)

(109) Afternoon Session

(Met, pursuant to the taking of the recess, at 2:00 o'clock p.m.).

(Mr. Slaughter) Your Honor please, may I confer with counsel?

(The Court) Yes.

(Conference among counsel.)

W. MELVIN STREET,

resumed the witness stand, and, having been previously sworn, testified further, as follows:

(The Clerk) Be seated, Mr. Street, you are still under oath, sir.

DIRECT EXAMINATION (Resumed)

By Mr. Slaughter:

Q. Mr. Street, I believe we ended up with a discussion of the — or testimony to the effect that the News American does purchase newsprint from Hearst Enterprises? A. Yes, sir, we do.

Q. Is the News American required to purchase newsprint from Hearst Enterprises? A. No, sir, we're not required to.

Q. Who pays for the newsprint? A. We do, locally.

Q. How is the price established? (110) I'll withdraw that.

Does the News American receive a preferred rate in the purchase of newsprint? A. Yes, we do.

Q. If you can get a better rate from an organization other than Hearst Enterprises, may Mr. Collins exercise his

judgment and discretion and so purchase it? A. Yes, sir, he can.

(Mr. Rubenstein) Well, if Your Honor please, before you answer that question, Mr. Street, we're on a very speculative area here, I mean, the fact of the matter is that they purchased their newsprint from Hearst Enterprises, and as to what they may do is — I think it's irrelevant. It's what they do do.

Unless there are examples of how he said, no, I don't want this and I want to buy my own newsprint, of course.

(The Court) No. Objection overruled.

You may, of course, explore it on cross-examination.

(Mr. Rubenstein) All right.

(The Court) As to instances where he has exercised his discretion.

All right.

By Mr. Slaughter:

Q. Mr. Street, in what area, if any, does the News (111) American compete with WBAL-TV and Radio? A. We compete in the area of advertising dollars, not only WBAL, but the other news media in town, and also compete in news, we try to be first with the news.

Q. Now, explain what you mean when you say you compete with respect to advertising dollars? A. Any advertisers that are patronizing WBAL or any other radio or TV station, we certainly make contact with to try to get them to use the News American as an advertising medium.

Q. In that connection, do you, likewise, compete with the Baltimore Sun? A. Yes, sir, very much so.

Q. Now, in connection with your advertising operations, how do you obtain advertisements in the press? A. We have our own local staff covering the local advertisers, we have a national staff covering national advertisers, we also

have and retain Key Marketing Services, which is a division of The Hearst Corporation.

Q. Is there any interchange of personnel between your Advertising Department and other departments, either of The Hearst Corporation or of WBAL-Radio and TV, or other marketing organizations with which you deal? A. No, sir.

Q. Who establishes the rates charged by the News (112) American for its advertising, or the advertising it carries in its newspapers? A. The News American personnel, namely, Mr. Collins, with the advice and consideration from me and the Advertising Director.

Q. Now, I believe there has been some testimony that there is, in fact, an advertising contract with WBAL.

Are you familiar with that contract? A. Yes, sir.

Q. What is the value, approximately, of that contract? A. Approximately \$60,000.00.

Q. How was that contract arrived at? A. By negotiations.

Q. How do the rates compare with respect to other advertising outlets used by the News American? A. We have a rate card, a public rate card, and WBAL is charged the same rate as any other advertiser.

Q. Now, do you, likewise, have contracts with the radio station for running advertisements of the newspaper? A. That's right.

Q. How is the rate established there, who establishes the rate? A. It's the contract rate, which is available to all advertisers.

Q. Is that rate established by The Hearst Corporation? (113) A. No, sir.

Q. And who pays these rates? A. The Baltimore News American Division.

Q. That is, when you are advertising with WBAL-Radio or TV? A. Yes, sir.

Q. And vice versa? A. Yes, sir.

Q. What contracts do you have with other advertising media in Baltimore? A. We have one with WJZ-TV.

Q. That's the Westinghouse station? A. Yes, sir.

We have it with at least six or eight other radio stations. WCAO, WCBM, WITH.

Q. Some of the smaller stations, perhaps? A. Some of your smaller stations, I'm not sure of now.

Q. Mr. Street, I show you a document which is entitled, the News American Hospital, Surgical, Medical, Major Medical Expense Program.

I will ask you to look at that, and ask you, also, to testify whether or not you are familiar with it? A. Yes, sir, I am.

Q. What is that program? (114) A. It's a program for some of the News American employees. The majority of our employees have a hospitalization plan, but for those employees who have elected during the negotiations to give up the duplicate coverage carried by the Equitable Insurance Company, duplicate through the Blue Cross-Blue Shield, we have instigated a major medical plan.

Q. With whom is that plan? A. It's now in effect with the News Union of Baltimore, the electricians, the machinists, and it has been offered to the pressmen and the circulation distributors.

Q. Who underwrites the plan? A. We do here, locally.

Q. At whose initiative was this plan drawn up? A. It was drawn up locally here, made available to the exempt personnel, and then during negotiations for those who wanted to give up the duplicate coverage by the Equitable plan, we would, at their election, let them accept the major medical.

The three Unions I just mentioned accepted the major medical plan in addition to the basic Blue Cross-Blue Shield coverage and gave up the Equitable plan.

Q. What part did The Hearst Corporation play in the evolution of this plan? A. None at all.

(115) CROSS EXAMINATION

By Mr. Rubenstein:

* * * * *

(115) Q. Now, your predecessor, Mr. Mills, was he your predecessor? A. Yes, sir.

Q. Right.

Now, Mr. Mills was, however, a Hearst employee, was he not, in that he had come to Baltimore from another Hearst paper and had been in the Hearst organization? A. Yes, sir.

* * * * *

(117) Q. Now, if you know, to whom does Mr. Collins report? A. To the Executive Vice President.

Q. Who is? A. Mr. Frank Massey.

Q. And that is the gentleman whose name was mentioned? A. That's right.

Q. Before, is that correct, the Executive Vice President, and that's the Executive Vice President of The Hearst Corporation? (118) A. That's right.

Q. And he also reports to Mr. Berlin, who is the President of The Hearst Corporation. I assume, is that so? A. I'm sure he can call upon Mr. Berlin, whether he reports to him, I do not know.

Q. Now, the budget, you stated that you make up a budget, the budget — is that budget not submitted to New York for approval? A. No, sir.

Q. You do not have to submit any budget to New York at all? A. I submit a budget to New York, yes, sir.

Q. Well, you submit it to New York.

Why do you submit it to New York? A. So they will know what we anticipate our revenue and expenditures to be.

Q. And, also, so that they can approve it? A. It's never been approved, to my knowledge.

Q. You mean it has never been disapproved? A. It has never been approved or disapproved.

Q. But it is submitted? A. It is submitted.

* * * * *

(119) Q. Well, has the News American ever taken a position that it no longer wanted to use the Hearst services, the variety of Hearst services that are made available?

(120) A. In total?

Q. In total, yes? A. Not to my knowledge.

Q. And the discretionary aspect is the fact that, I think as you testified, many times the number of stories will come out of the services than the News American, or any one newspaper, can possibly use, therefore, you have discretion to say, well, we're only going to use three stories today, although there may be 87 that have come over the wire, isn't this the discretion that you're talking about? A. No, sir.

Q. You're saying that you have discretion to tell King Features that we're no longer going to use any of your service? A. Yes, sir.

Q. But it has never been done? A. Not to my knowledge.

Q. Well, how do you know you have that discretion? A. We've been informed of such.

Q. By whom? A. By Mr. Berlin and Mr. Markuson.

Q. They have told you that you are free not to use in toto any of the Hearst services that are available? A.

They have told us that we have the discretion to decide what services we will use.

* * * * *

(122) Q. He has told you, you don't have to buy your newsprint from Hearst Enterprises if you can get a better price some place else, is that what he told you? A. Whether he said it in those exact words, I do not know, but he did let me know that I could buy newsprint from another supplier if it was in our interest to do so.

Q. But, as a matter of actual fact, you could never get a better price from anybody else, could you? A. That I don't know, sir.

Q. You've never tried? A. At the present time I haven't been aware of any better price.

Q. And how is that price established, do you know how that price would be established, that's available to your paper? A. Because of quantity discounts.

Q. Quantity discounts to the total Hearst papers, all the papers that The Hearst Corporation has that buys its (123) newsprint from Hearst Enterprises, then, of course, each individual Hearst paper is able to get a quantity discount, is that what you mean? A. I assume so, yes, sir.

* * * * *

(124) Q. Well, was that not upon advice of counsel? A. Mr. Sherbow. yes.

Q. Right.

And that is the same Mr. Sherbow who a little while ago was identified as counsel for WBAL? A. The same law firm.

Q. Same law firm.

* * * * *

(127) (Mr. Rubenstein) Mr. Doyle is, of course, correct, and I identify the office of Sherbow, Shea and Doyle, as well as the office of Lipton, Brennan and Wasserstrom, as attorneys for Hearst, and I did not mean to slight Sher-

bow, Shea and Doyle, because I do consider them attorneys for the Hearst interests in this city, but I do think that a common labor relations counsel, the Board has mentioned it, the Court mentioned it in the Miami Newspaper Printing Pressmen's case as a factor, they didn't give any weight to it in that particular case. but it was, apparently, extensively litigated.

(The Court) Well, you have common counsel, they represent the News American and WBAL, so what do you want to bring in the New York firm and hurt their feelings for?

* * * * *

(128) Q. But Mollie Martin does write a column for the News American, is that correct? A. Yes, sir.

Q. And she does appear on WBAL? A. Yes, I understand she does.

* * * * *

(129) Q. You also said something that I didn't quite catch here at the end, something about when Mr. Slaughter was questioning you about the hospital program, you said that they could take this hospital program and something about duplicate coverage with the Equitable plan.

What was the Equitable plan, that you were talking about? A. It was a company-wide plan.

(130) Q. When you say company-wide, you mean what company-wide? A. The News American Division.

It was a master contract with The Hearst Corporation. It was throughout the News American and, of course, during the negotiations, we have negotiated in Blue Cross and Blue Shield in the contracts, so during my negotiations since I've been in Baltimore, we have negotiated out the duplicate coverage and given either the major medical or added to their pension plan.

Q. Right.

But so that the record is clear, the duplicate coverage, or the Equitable plan you were talking about, is a Hearst

Corporation plan that was available to all the employees of the News American Division, as well as to many other employees of The Hearst Corporation in, perhaps, Baltimore, or elsewhere, isn't that correct? A. Yes.

Q. Right. A. No, I say yes, I don't know whether — it was available to the News American, I don't know whether it was available to all.

Q. But you do know that the master contract was a Hearst Corporation master contract? (131) A. I know that our participation was through The Hearst Corporation at that time.

Q. Right. A. Whether it is now, I don't know.

Q. And, of course, what had happened, or what has happened, is that as the individual crafts and Unions negotiate, they have — some of them have their own plans, their own Health and Welfare Plans, or prefer other types of coverage and have been able to negotiate these plans, is that right? A. That's right.

Q. Now, similarly, the retirement plan, there is available to certain personnel of the News American, The Hearst Corporation Retirement Plan, isn't that so? A. That's right.

Q. And that is the same plan that I think we described this morning when Mr. Gunts was on the stand as being available to the personnel at WBAL? A. This I could not say.

Q. Well, would you recognize this booklet that I showed to Mr. Gunts this morning, do you have any knowledge of that? A. Yes.

Q. And is that the plan that is available to News American personnel? (132) A. Yes, sir.

Q. Right.

I would like the record to show that this is the same booklet that Mr. Gunts testified this morning as being available to WBAL personnel.

Do you also have at the News American available a Continental Insurance Company Plan for Salary Continuance?

A. For some employees.

Q. For some employees.

And, again, I would show you this certificate of insurance and this little booklet and ask you to identify that, is that the same plan? A. Yes, sir.

Again, I would like the record to show that this is the certificate of insurance made out to Mrs. Ann Hoffman that Mr. Gunts identified this morning, as well as the booklet that he identified.

I just want to come back to one point.

Isn't it a fact that The Hearst Corporation in New York sends through the wires certain editorials that you must print? A. No, sir.

Q. That is not.

And, for example, I notice as a subscriber of the News American that Mr. Hearst has an editorial on the (133) front page of the Sunday American, every Sunday.

Do you have — is it your testimony that you have the discretion to say, well, we're not going to print that? A. I don't have that discretion, Mr. Collins and the Editor have that discretion, yes.

Q. Mr. Collins and the Editor have that discretion? A. Yes, sir.

Q. And you know of this of your own personal knowledge? A. Yes, sir.

Q. Based on what they told you? A. Yes, sir.

Q. To your knowledge, again, with respect to articles such as Mr. Hearst's editorials, have they ever exercised that discretion? A. This I could not answer.

Q. Have you ever been aware of any exercise of it? A. No, sir.

(Mr. Rubenstein) That's all.

Well, let me ask you this.

By Mr. Rubenstein:

Q. There are, however, editorials and material that are sent to you by Hearst, which you do print? A. Not sent to me, sir.

(134) (The Court) What?

By Mr. Rubenstein:

Q. Sent to the newspaper? A. Yes, sir.

Q. Right.

(The Court) That they what?

(Mr. Rubenstein) That they do, in fact, print matters which originate from The Hearst Corporation in New York.

(The Witness) Yes.

REDIRECT EXAMINATION

By Mr. Slaughter:

Q. Mr. Street, in connection with this retirement plan, isn't it a fact that you have also retirement plans which have been negotiated with the various labor Unions? A. Yes.

Q. To represent the employees of the News American? A. Yes, sir, we have several.

Q. And they are separate and apart from this plan in the blue book here about which Mr. Rubenstein questioned you, isn't that correct? A. Yes, sir.

Q. Who actually is covered under this plan that Mr. (135) Rubenstein asked you about?

I'll show you page 4.

(Handed.)

All right, who would be covered under that plan? A. Employees that are not covered by a collective bargaining agreement or who are not covered by a plan by which the News American, or any division of the News American, contributes.

Q. One question, Mr. Street, were you directed by anyone from New York to file the charges which gave rise to these proceedings? A. No, sir.

* * * * *

(137) (The Court) All right.

(Mr. Rubenstein) If Your Honor please, there is one bit of testimony which we want to put into the case which we can do by way of stipulation.

(The Court) All right.

(Mr. Rubenstein) And then we'll rest.

(The Court) All right.

(Mr. Rubenstein) Pursuant to my request that had been made prior to this—

(The Court) Ahuh.

(Mr. Rubenstein) —and based on some information, there is in existence, personal service contracts between The Hearst Corporation (Baltimore News American Division) a Delaware corporation hereinafter referred to as Hearst, and—

(The Court) Now, wait a minute, between Hearst Corporation (Baltimore News American—

(Mr. Rubenstein) American Division) a Delaware corporation hereinafter referred to as Hearst.

(The Court) Okay.

(Mr. Rubenstein) And the following certain individuals. These individuals are Louis Azrael, Tom Cofield, Frank DeFilippo, Warren Perry, Joan Rodgers, E. Sechtman, John Steadman, and Melvin Street, and in addition there

is an agreement between The Hearst Corporation and Mark F. Collins.

(138) (The Court) Now, wait a minute.

These are Hearst Corporation (Baltimore News American Division).

(Mr. Rubenstein) Right.

(The Court) Now, you're telling me about a contract between Hearst Corporation only?

(Mr. Rubenstein)

Yes, Hearst Corporation and Mark Collins, and Your Honor will see, because the agreements are identical except for certain specifics.

(The Court) All right.

(Mr. Rubenstein) But for the point of this—

(The Court) All right.

(Mr. Rubenstein) And Mark F. Collins, Publisher.

(The Court) All right.

(Mr. Rubenstein) Each of these agreements contain the following:

The Hearst Corporation shall have the right to transfer — and then it either says employee or the specific name of the employee, some of them say employee, and some of them say Steadman, or whoever the individual is — to any of its divisions or to any property operated, directly or indirectly by it, or to assign this agreement to any corporation owned or controlled, directly or indirectly by it.

(139) Now, we would like the record to show that each of these agreements are printed agreements with certain typed material in the proper spaces covering some compensation, and things like that, which would be peculiarly unique to that particular person.

And with that, the Respondent would rest.

I'm sorry. I would like the record to make a correction.

The Collins agreement also is by and between The Hearst Corporation, Baltimore News American Division, and the difference is that the Collins agreement is signed at the back, and I think this is what threw me off, by The Hearst Corporation by Markuson, Executive Vice President, and the other agreements that I mentioned are signed by Mr. Collins, The Hearst Corporation, Baltimore News American Division, by Mark Collins, Vice President; and I think it can be stipulated Mr. Collins is a Vice President of The Hearst Corporation.

Would that be stipulated?

(Mr. Slaughter) So stipulated.

(Mr. Doyle) I don't know whether we can further — that part of the stipulation is all right, I don't know how we get into the record, though, the fact that it has never been exercised, these witnesses would so testify, Mr. Street to the extent of his knowledge would so testify, that that (140) transfer clause has never been utilized.

(The Court) Will you stipulate to that?

(Mr. Rubenstein) No, we will not stipulate to that because I think the record has shown with respect to one or two of these people that they appear on WBAL and they write for the News American.

(Mr. Slaughter) But as independent contractors, if Your Honor please.

(The Court) Yes, the record so far is that when Steadman appears on WBAL, or White, or some of these others, he appears as an independent contractor and he is paid the same as anybody else who they may get from the Sun-paper or anyone of that nature.

(Mr. Doyle) They are considered, if the Court please, freelance performers under the AFTRA contract and they are paid in accordance with that provision of that contract.

(The Court) Well, is there a contract — what are you referring to now, Mr. Doyle?

(Mr. Doyle) I say, Mr. Steadman, who is paid and who is employed by the News American, if he comes on the radio station, he has a separate deal with the radio station and gets whatever rates are negotiated there.

(The Court) Is there any provision in their contract with Hearst, the News American provision, that that is so?

(141) (Mr. Doyle) No, sir.

This is a special, this is an independent arrangement.

(The Court) But there is testimony to the effect and it has been unrefuted that when these men appear on WBAL-Radio or TV that they get paid by WBAL-TV in the one case or WBAL-Radio—

(Mr. Doyle) Correct.

(The Court) —on the other, and that they are paid the same rate as anyone else who WBAL TV or Radio might hire for the specific purpose from anywhere, the Sun-papers or anyone else.

(Mr. Rubenstein) Yes, sir, but I don't think — that is not the issue that I'm trying to bring to the Court.

The testimony also was, for example, that somebody who appears on WBAL on one of these programs, and if he could be an employee of WBAL, and I think I used Mr. Neal Friedman as an example with Mr. Gunts in the testimony. Mr. Friedman being an employee and one of the members of this unit; he, too, receives the stipulated sum for an appearance on that program, but the issue really is this, the issue is not whether he gets paid or whether it comes out of pocket A or pocket B, the question is that this company now, for Mr. Steadman and some of these individuals, have the right to say to Mr. Steadman, you will appear on WBAL tomorrow night at (142) 7:30.

(Mr. Doyle) No, sir.

(Mr. Rubenstein) And Mr. Steadman may get paid a certain rate in accordance with a contract and it may come out of WBAL's pocket, but that does not mean that Mr. Steadman is an independent contractor and has contracted with the station independently to appear.

(The Court) Well, the way I take the provision that you have stipulated — reading this stipulation that apparently has been agreed on in reference to the two contracts, one between personnel, certain personnel, Louis Azrael, et cetera, Hearst Corporation, the News American, Baltimore Division, which was signed by Mark Collins as Vice President of The Hearst Corporation, and, again, the — well, let's just take that for a minute; what I take that to mean is that if The Hearst Corporation, Baltimore Division, wished to transfer these men to any of its divisions, or to any property operated by it, and assigned it, or to any assignee, I mean, assign it to any corporation owned or controlled directly or indirectly by the — meaning The Hearst Corporation, they can do so.

Now, wait a minute, let me get through.

Now, that doesn't mean that every time Steadman goes on WBAL, either Radio or TV, that Mark Collins, the Vice President of The Hearst Corporation, says go over to (143) WBAL.

(Mr. Rubenstein) As a practical matter, I'm sure it doesn't work that way. I quite agree.

(The Court) What I would take it to mean, if, for example, he said, well, go to the so-called roving editorial staff with Hearst, or something like that, Milwaukee, that they would have to do it, unless they want to quit.

(Mr. Rubenstein) Well, I think, Your Honor, that the only way in which I can make the point is to have the entire contract into evidence, rather than—

(The Court) Well, put it into evidence.

(Mr. Rubenstein) For example, the first paragraph says, Hearst hereby employs Steadman as Sports Editor of the

News American and Steadman agrees to render his services to Hearst as such Sports Editor, together with such other services as shall be required of him from time to time by Hearst.

Now, I think that we can make copies of this. I noticed that they did, you know, black out the figures, the compensation figures, which don't necessarily, have any place in this hearing and I certainly am not concerned with it.

(The Court) All right.

(Mr. Rubenstein) And I think that I would then request that we make photostatic copies.

(144) (The Court) Put it in as your Exhibit No. 1, or whatever you want to do, but I'm not interested in the individual situation.

(Mr. Rubenstein) Well, I'm not either. They're all the same, or virtually the same.

(The Court) It seems to me that what we're talking about is a matter of argument, isn't it?

(Mr. Rubenstein) Well—

(The Court) You say it means one thing, they say it means another.

(Mr. Rubenstein) Yes, but I think the fact that there are individuals and, of course, this is the only point I'm making, that personal service contracts which give the employer certain powers, whatever they are, it speaks for themselves.

* * * * *

(152)

BRENT GUNTS,

resumed the witness stand, and, having been previously sworn, testified further as follows:

(The Clerk) Take the stand, Mr. Gunts.

You are still under oath, sir.

DIRECT EXAMINATION

By Mr. Slaughter:

Q. Mr. Gunts, should Mr. Collins send Tom White over to WBAL-TV with instructions that you are to hire him, are you compelled to do so?

(Mr. Rubenstein) Objection.

First of all, we went over the list of names of — and Tom White did not happen to be one of those with whom there was a personal service contract.

(Mr. Slaughter) All right.

(Mr. Rubenstein) But, secondly, the contract speaks for itself.

(The Court) I will permit the testimony, for what it's worth, as you say it does, but—

All right.

(The Witness) Mr. White or Mr. DeFilippo?

By Mr. Slaughter:

Q. Mr. DeFilippo? (153) A. Mr. DeFilippo.

Would I be compelled to hire him?

Q. Yes. A. Well, to the contrary. Mr. Collins would have nothing at all with whom I hired.

Q. Can Mr. Collins direct what personalities you should hire on an independent contract basis in connection with specific programs? A. Absolutely not.

Q. And would this apply to Steadman? A. Correct.

Q. DeFilippo? A. Correct.

Q. Tom White? A. Correct.

Q. Louis Azrael? A. Correct.

Q. Tom Cofield? A. Correct.

Q. Warren Perry? A. I don't know him, but its correct.

Q. Joan Rodgers? A. Correct?

Q. E. Sechtman? A. Correct.

(154) Q. And Melvin Street? A. Correct.

And Mark Collins.

Q. And Mark Collins.

Isn't it a fact that when — although we are dealing with certain personalities in the news media area in the City of Baltimore, or Metropolitan Baltimore, isn't it a fact that the effect of what any of these people do, whether they come from the News American, the Afro-American, or any other segment of our business society, are really moonlighting?

(Mr. Rubenstein) Objection.

(The Court) Objection sustained.

As far as the term moonlighting is concerned.

(Mr. Rubenstein) Well, I think it's highly leading, also.

(Mr. Slaughter) All right.

By Mr. Slaughter:

Q. Aren't they acting — are they acting, if you know, on their own volition, or are they acting under direction?
A. On their own volition.

Could I volunteer that we also hire the — for WBAL-TV on his own volition, the Sports Editor of the Afro-American, Mr. Sam Lacey, who appears regularly on WBAL-TV, and who is paid by WBAL-TV for his appearances, he (155) is also the Sports Editor of the Afro-American newspapers.

Q. Are you aware of any personal contracts any of these people we have mentioned might have with the News American Division? A. I didn't know they existed.

CROSS EXAMINATION

By Mr. Rubenstein:

* * * * *

(158) Q. And your contract to manage then does not contain a provision which forbids people from The Hearst

Corporation from telling you who to hire? (159) A. No, it does not contain such a provision.

Q. And so, if The Hearst Corporation had — has, which they do, the record will indicate the The Hearst Corporation has personal service contracts which entitle The Hearst Corporation to put these individuals into any division that they desire, they could put them in WBAL, whether you liked it or didn't like it? A. I guess my alternative would be to resign.

ALFRED BURK,

resumed the witness stand, and, having been previously sworn, testified further as follows:

(The Clerk) Just be seated. Mr. Burk, you are still under oath.

That's Alfred Burk.

DIRECT EXAMINATION

By Mr. Slaughter:

Q. Mr. Burk, do you know John Steadman? A. Yes.

(160) Q. I believe John Steadman, from time to time, has had a sports broadcast? A. That is right.

Q. Does he has such a broadcast with your station, WBAL-Radio? A. Yes.

Q. At the moment? A. Yes.

Q. Where was he engaging in his sports broadcasts before he became associated with WBAL-TV — I mean, Radio? A. I didn't understand your question.

Q. Did he have a sports broadcast with another radio station prior to his arrangement with WBAL-Radio? A. Yes, he did.

Q. What station was that? A. WFBR.

Q. WFBR is not affiliated with WBAL, is it? A. No.

Q. What was the arrangement, and what is the arrangement, the station has with Mr. Steadman? A. Our agreement with John Steadman is two shows a day for a price.

(Mr. Rubenstein) For what?

(The Witness) For an agreed sum of money.

(161) Q. Now, who negotiated that contract? A. I did.

Q. With whom? A. Steadman.

Q. Either prior to, or at the time of those negotiations, did you have any contact whatsoever with Mr. Collins or anyone else from the News American? A. None at all.

Q. During those negotiations, did you have any contact with any official of The Hearst Corporation in New York? A. No.

Q. Is there any relationship between that contract the radio station has with Mr. Steadman and his employment as News Editor of the News American? A. None, except that his background as a sports man qualifies him for the sports job he has on the station.

Q. Who is the Sports Editor of the Afro-American? A. Sam Lacey.

Q. Do you have a similar type of contract with Mr. Lacey, or have you entered into similar types of contracts from time to time with Mr. Lacey? A. No, I haven't.

Q. Other than your contract with Mr. Steadman, is there any restriction upon you as General Manager of the radio operation to sever that contract with Mr. Steadman and (162) enter into a contract for similar services with Mr. Lacey? A. I'm not quite sure I understand the question.

Q. Is your contract with Mr. Steadman for a period of time? A. Until forbid, there is no set date.

Q. All right.

Does that mean that for reasons satisfactory to you as the General Manager, you may, with reasonable notice, cancel that contract? A. That is correct.

And he has the same right.

Q. Now, is that pursuant to any dictates from The Hearst Corporation? A. None at all.

Q. Is it pursuant to any dictates of Mr. Mark Collins? A. None at all.

Q. Are you, or are you not, free to cancel that contract and enter into a similar contract with Mr. Lacey? A. I could, yes.

* * * * *

PROCEEDINGS BEFORE TRIAL EXAMINER

(1) *Before The National Labor Relations Board
Region 5*

Case No. 5-CC-446

*In the Matter of:
American Federation of Television and Radio Artists,
Washington-Baltimore Local, AFL-CIO
and
The Baltimore News American Division,
The Hearst Corporation*

National Labor Relations Board,
Federal Building, Charles Center,
Baltimore, Maryland,
Wednesday, November 6, 1968.

The above-entitled matter came on for hearing, pursuant to notice, at 10 a.m.

Before: Samuel M. Singer, Esq., Trial Examiner.

Appearances:

Charles B. Slaughter, Esq. and Maurice J. Nelligan, Jr.,
Esq., Attorneys, Region 5, N.L.R.B., Federal Building,

Charles Center, Baltimore, Md., appearing as Counsel for the General Counsel.

James J. Doyle, Jr., Esq. and Theodore Sherbow, Esq., Law Offices of Sherbow, Shea and Doyle, 10 Light Street, Baltimore, Md., appearing on behalf of the Charging Party.

Bernard W. Rubenstein, Esq., Law Offices of Edelman, Levin, Levy & Rubinstein, 10 Light Street, Baltimore, Md., 21202; and

Samuel Levine, Esq., Attorney, Warner Building, Washington, D.C., appearing on behalf of the Respondent Union.

* * * * *

(7) (Mr. Slaughter) If the Examiner please:

The issue in this case is really a legal issue and it is that or the question is whether or not two wholly owned divisions of a corporation can constitute two "persons" under Section 8(b)(4) of the Act so that one of those divisions may be insulated under the Act from secondary conduct in furtherance of a dispute at the other division. There is no issue—

(Trial Examiner) Excuse me.

There are divisions and divisions and divisions—

(Mr. Slaughter) I am going to explain.

(Trial Examiner) All right. Go ahead.

(Mr. Slaughter) —There is no dispute of the basic fact that The Hearst Corporation is the owner of WBAL-TV and WBAL-Radio, which, for the purposes of this proceeding, would constitute, from our point of view, the primary employer, and that it likewise owns The Baltimore News American, a newspaper in Baltimore, which, in our view, would constitute the secondary employer, and, therefore, both of them would be "persons" within the meaning of Section 8(b)(4)i, ii, (B).

It is the position of the General Counsel that the test to be applied in a situation of this sort is the degree of

(8) control of the day-to-day operations, including labor relations, of these respective employers.

We contend that the facts will prove that there is no such day-to-day control; that in fact these two divisions not only are engaged in separate and also highly competitive operations but, furthermore, that under the scheme of operation of The Hearst Corporation they are autonomous in their day-to-day operations, and because there is not control from New York, as we say, which is the headquarters of The Hearst Corporation, with respect to their operations and their labor relations including the formulation of operating policies and labor relations policies.

The Hearst Corporation, as the record will show, is really a corporate giant. It is headed up by only three operating executives. Realistically, therefore, it would be, we contend, impossible for three men to formulate policies and engage in active control of the day-to-day operations of these separate divisions.

Now, what gave rise to this basic dispute is simply this: the Respondent Union had a contract or contracts with WBAL-Radio and WBAL-TV and they were engaged in joint negotiations, as a result of which the Respondent Union struck the Radio and TV Stations, both of which are located on the same premises in North Baltimore—

(Trial Examiner) Both of which—

(9) (Mr. Slaughter) Are located on the same premises.

(Trial Examiner) Who are located on the same premises? The News American—

(Mr. Slaughter) No, no. The WBAL-Radio and WBAL-TV.

(Trial Examiner) I see. All right.

I assume there is evidence in the transcript—

(Mr. Slaughter) Yes, sir.

(Trial Examiner) —of the court proceedings as to the respective locations of the television station, the Charging Party, and The News American?

(Mr. Slaughter) Yes, Your Honor.

—Now, in furtherance of that dispute, subsequently, on two occasions, the Respondent Union picketed The News American, on the first occasion for approximately four hours, as a result of which certain employees of the newspaper honored the picket line and some of the issues for that particular day were lost. The pickets were removed, I believe, at around noontime and subsequently returned on October the 2nd in the early morning.

As a result of this picketing the newspaper was virtually completely shut down and was only able to put on the street an abbreviated edition which was only some nine to ten thousand copies out of a seventy-six page edition and a circulation of some two hundred thousand.

On the afternoon of the 2nd of October we obtained a (10) temporary restraining order from the United States District Court for the District of Maryland. Pursuant to agreement of the parties the picketing was discontinued pending disposition of the case by the Court.

The transcript, which is General Counsel's Exhibit 2, is the testimony of the hearing which was subsequently held in that case, as I noted before, on October 7th.

I think that is all at this time, sir.

(Trial Examiner) Will you bring up to date the disposition of the matter in the U. S. District Court.

(Mr. Slaughter) Following the hearing on October 7th, Counsel for the Respondent submitted briefs. We had argument the following day and Judge Edward S. Northrup handed down a decision the following Monday in which he sustained the position of the General Counsel, which I have very succinctly stated here.

(Trial Examiner) He granted a temporary injunction?

(Mr. Slaughter) He granted a temporary injunction pending the disposition of the case by the Board.

Now, I might state that on the day following the Court's decision, which is printed in L.L.R. for Monday of this week in full, the primary dispute was settled as a result of that and since the employees of the Radio and TV Stations returned to work there was no necessity for the Court signing a written order, so that was not done. However, he did reserve the (11) right, and so stated quite clearly, to sign an order immediately should Respondent's pickets or any pickets acting on behalf of Respondent return to The News American.

(Trial Examiner) Well, let me get this straight.

Judge Northrup issued a restraining order shortly after October 7th. Is that what you said?

(Mr. Slaughter) Well, the Chief Judge, Judge Thomsen, issued a temporary restraining order on October the 2nd. On the morning of October the 3rd that injunction was dissolved on the basis of an agreement by all the parties — the General Counsel, the Respondent, and Counsel for The News American, WBAL-Radio and - TV — that pending the disposition of the case by the Court there would be no further picketing of The News American.

(Trial Examiner) All right.

Now, what was the last step taken by the Court? When did it issue its opinion?

(Mr. Slaughter) The last step taken by the Court was its decision, which issued on October the 21st, 1968.

(Trial Examiner) That is the one that is reported in the Labor Relations Manual?

(Mr. Slaughter) That is correct, sir.

(Trial Examiner) All right.

Mr. Rubenstein, do you agree with that statement of General Counsel of the history of the proceedings before the (12) U.S. District Court?

(Mr. Rubenstein) Yes, sir.

(Trial Examiner) And do you, Mr. Doyle?

(Mr. Doyle) Yes, sir.

* * * * *

(21) (Mr. Slaughter) All right.

One we did not discuss and which Mr. Nelligan called to my attention — he has read the transcript of the District Court case much more recently than I have — I was under the impression that the record clearly showed the respective locations of the WBAL-TV and - Radio on the one hand and The News American on the other. I would propose a stipulation that the WBAL-Radio and - TV are located on what is known locally as Television Hill, which is actually at 3800 Hooper Avenue; that The News American, on the other hand, is located at Lombard and South Streets, Baltimore; and that they are approximately six miles apart.

(Trial Examiner) All right.

Do you agree?

(Mr. Rubenstein) Yes.

(22) (Trial Examiner) All right.

The stipulation is accepted.

(Mr. Levine) The Hooper Avenue address is in Baltimore.

(Mr. Rubenstein) They are both in Baltimore.

(Trial Examiner) They are both in Baltimore?

(Mr. Slaughter) Yes.

(Trial Examiner) All right.

(Mr. Levine) Mr. Examiner, we would like to stipulate the following — this was discussed at the pre-hearing conference — namely, that:

The collective bargaining agreement that was in effect between AFTRA and WBAL-TV and - Radio for the period

September, 1963 to September, 1965 contained the language that it was:

" . . . between the AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, AFL-CIO, a voluntary association organized and existing under the laws of the State of New York, and having its principal office at 724 5th Avenue, New York, New York, and its WASHINGTON, D.C. LOCAL, party of the first part (hereinafter called "AFTRA"), and WBAL Division — The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and having its principal office at 3800 Hooper Avenue, Baltimore, Maryland, party of the second part (hereinafter called "Company"), owning and operating (23) "stations WBAL-AM-FM and WBAL-TV (hereinafter called "Station")."

Now, this same collective bargaining agreement contains the following provision, numbered Paragraph 14, National Board Approval. It reads as follows:

"This Agreement is subject to consideration and approval by the National Board of AFTRA and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA."

The agreement contains signature lines over which the inscriptions "WBAL DIVISION — THE HEARST CORPORATION," then "AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, AFL-CIO," and another line for "AFTRA NATIONAL BOARD, National Executive Secretary," signatures to be provided.

That the collective bargaining agreement in effect between the same parties for the period of September, 1965 to September, 1968 contains the same language as far as identifying the parties, that is:

"Agreement . . . between the AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, AFL-CIO, a voluntary association organized and exist-

ing under the laws of the State of New York, and having its principal office . . . [in the same place as indicated before and indicating the party of the first part as "AFTRA"] . . . and WBAL . . . The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware . . . [as] . . . party of the second part . . ."

(Trial Examiner) Thus far is it agreeable to you?

(Mr. Doyle) I suspect that, Mr. Levine, that is the actual language you just read there?

(Mr. Levine) That is.

(Mr. Doyle) Did it say "WBAL" or "WBAL Division"?

(Mr. Levine examines document.)

(Mr. Levine) "WBAL Division — The Hearst Corporation."

(Mr. Doyle) Mr. Examiner, may I suggest that it might be more helpful if we were to submit photostatic copies of the relevant paragraphs into the record as exhibits? It is a little confusing to know when Mr. Levine is reading and when he is explaining.

(Trial Examiner) I do not think there will be any objection.

(Mr. Slaughter) I can have that done right here, sir.

(Mr. Levine) I have no objection, sir.

(Trial Examiner) Well, you may offer that at a later point.

(Mr. Levine) I have no objection to that.

(Trial Examiner) All right. That will be corroborating (25) evidence to support your reading, Mr. Levine.

(Mr. Levine) This same collective bargaining agreement, effective from September, 1965 through September, 1968 contains the following provision, which is marked Section 14, Approval:

"This AGREEMENT is subject to consideration and approval by the National Board of AFTRA and by the Hearst Corporation and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA and the appropriate Executive of The Hearst Corporation."

And signature lines are provided for the employer with the following language, "WBAL DIVISION — THE HEARST CORPORATION," then two signature lines; and for the Union, "AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, AFL-CIO," two lines for signatures, and then underneath that on the employer's side, "APPROVED," and under that, "RADIO-TV DIVISION-THE HEARST CORPORATION," and there is a line for the signature of a person on behalf of The Hearst Corporation, and then for the Union, "APPROVED: AFTRA NATIONAL BOARD," and a line for the signature of the person on behalf of the AFTRA National Board.

(Trial Examiner) Now, is that agreeable with you?

(Mr. Slaughter) Yes, sir.

(26) (Mr. Doyle) Yes.

(Mr. Levine) Now, we further agreed to stipulate that the proposals in writing submitted by the Union to constitute the collective bargaining agreement to be effective for the period following the expiration of the 1965-68 Agreement contained the same language as the quoted Section 14 of the 1965-68 Agreement, namely, requiring the approval and signature by The Hearst Corporation and that it shall not be binding until it is so approved both by The Hearst Corporation and by the AFTRA National Board.

(Mr. Doyle) May I suggest again that that proposal should be read verbatim? I do not think Mr. Levine has read it. I think he paraphrased it.

(Mr. Levine) I actually read it verbatim.

(Trial Examiner) Well, will you put quotes in where you start there?

(Mr. Levine) All right. Let me read it verbatim if there is any chance that I have not actually read it word for word. I think I have.

"APPROVAL. This AGREEMENT is subject to consideration and approval by the National Board of AFTRA and by The Hearst Corporation and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA and the (27) appropriate Executive of The Hearst Corporation."

(Trial Examiner) All right.

Is that agreeable now?

(Mr. Doyle) Yes, sir.

(Mr. Slaughter) Yes. That is agreeable.

(Trial Examiner) All right.

Are there any other offers to stipulate?

(Mr. Levine) Yes.

We further offer to stipulate the fact that the proposals — I think I have already indicated it — that the proposals submitted by AFTRA for the agreement to follow the expiration of the 1965-68 Agreement contained the language that I just quoted concerning the need for approval by The Hearst Corporation and the AFTRA National Board.

(Trial Examiner) All right.

Is that agreeable with you, Mr. Doyle?

(Mr. Doyle) Yes, sir.

(Mr. Slaughter) That is agreeable.

(Trial Examiner) All right.

(Mr. Levine) And that the company submitted counter-proposals in writing suggesting changes in the collective bargaining agreement and that there is no change suggested in that language by the company.

(Trial Examiner) Mr. Doyle, is that a fair statement?

(Mr. Doyle) Yes, sir.

(28) (Mr. Slaughter) That is right.

* * * * *

(31) MR. RICHARD E. BERLIN,

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Slaughter) Mr. Berlin, state your full name, please, sir? A. Richard E. Berlin.

Q. What is your occupation, sir? A. I am President and Chief Executive Officer of The Hearst Corporation.

Q. How long have you been in that position, sir? A. Since 1940.

Q. Where are the offices of The Hearst Corporation located? (32) A. At 959 Eighth Avenue, New York City.

Q. What other executive officers by title do you have in The Hearst Corporation, sir? A. At the present moment two besides myself.

Q. Who are they, sir? A. Mr. Frank Massey, who recently I appointed with the full permission of the Board of Directors as Executive Vice President. He was formerly the Treasurer. He still keeps the title of Treasurer, Executive Vice President and Treasurer, keeping it pro tempore until we appoint a new treasurer; and his assistant, Mr. Becker.

Mr. Massey succeeded Mr. Markuson who had been Executive Vice President of the Corporation working under me for a period of ten or fifteen years — I can't recall exactly — ten to fifteen years. Mr. Markuson passed away about the 15th of August, this last 15th of August. So that was why we appointed Mr. Massey as his successor.

Q. Thank you, sir.

Mr. Berlin, would you describe as succinctly as possible your duties as the President and Chief Executive of The Hearst Corporation?

* * * * *

(33) A. As Chief Executive Officer of the company, with full (34) permission of the Board of Directors to whom I report, I appoint publishers and managers of our various units; to wit, we will say Baltimore, which is in question at the moment, I appointed Mr. Mark Collins as our publisher in charge of the newspaper, I appointed Mr. Brent Gunts as the general manager of our television station and Mr. Burk as the general manager of our radio station.

My work principally is financial. I have contacts with our various units here and abroad, such as our King Features, which sells features to newspapers. Our foreign magazines, we have a group of them in England, some ten or twelve — the number I can't remember exactly because it changes from time to time.

We have land in the United States. In the state of California we have about 200,000 acres of land which comes under my supervision—.

(Trial Examiner) By "land," what do you mean "land"? Real estate?

(The Witness) Real estate. Yes. Real estate such as San Simeon. There is, I think, 77,000 acres of the San Simeon Ranch. It is run as a cattle ranch.

(Trial Examiner) I see. I did not realize Hearst was that diversified.

(The Witness) We are all over the lot, sir.

A. —We have some 60,000 acres of cattle ranch property (35) erty about sixty miles from San Simeon at Paso Robles, outside the town of Paso Robles in California. We have got about 50,000 or 60,000 acres in Northern California which is in timberland. We run and operate a very extensive lumbering operation—

(Trial Examiner) I see.

Now, in connection with these real estate operations, I assume there is somebody in charge and you appointed him. Is that what you mean?

(The Witness) Exactly. Yes. The same as in every one of our units.

A. —Real estate. Features. Newsreels. We are in the motion picture business. As a matter of fact, we have an interest in this new picture that is going to be shown next week, "The Yellow Submarine," with the Beatles. That ought to be very exciting.

(Trial Examiner) We will take that as a commercial.

(The Witness) Yes. Go see it.

A. —And so it goes. I am sure I could enumerate many more things but they slip my mind at the moment.

(Trial Examiner) Yes. I think you answered the question. Now, if there is anything more—

(The Witness) That is the only reason I wrote them down, to save time.

(Trial Examiner) All right, Mr. Slaughter.

(36) Q. (By Mr. Slaughter) Mr. Berlin, have you read the testimony and are you familiar with the testimony in the injunction proceedings before the United States District Court for the District of Maryland of Messrs. Gunts, Burk and Street? A. Yes, sir.

Q. Do you have any disagreement with their testimony regarding their respective duties, responsibilities, functions and authority, sir? A. None whatsoever. They were correct in each instance.

Q. Approximately how many divisions are there which are owned by The Hearst Corporation? A. Twenty to thirty.

Q. I believe you gave us an example of some of those in connection with the prior question? A. Right.

(Trial Examiner) Now, let us see. By "divisions" you mean each unit — for instance, each real estate operation would be a different unit. Is that what you mean by "divisions"?

(The Witness) Yes.

(Trial Examiner) All right.

Q. (By Mr. Slaughter) Now, how many newspaper divisions are there in The Hearst Corporation?

(The Witness) I can name the papers.

(Mr. Slaughter) All right, sir.

(37) A. Starting on the West Coast, there is the Seattle Post Intelligence in Seattle; in San Francisco, the San Francisco Examiner; in Los Angeles, the Los Angeles Examiner; in San Antonio, Texas, the San Antonio Light; in Boston, the Boston Record American; in Albany, the Albany Times Union, Albany, New York, in the evening the Knickerbocker News; in Baltimore, The News American—I think that covers it.

(Trial Examiner) Do you have other television operations?

(Mr. Slaughter) I am coming to that, Mr. Examiner.

(Trial Examiner) All right.

Q. (By Mr. Slaughter) Now, what is the title of the top executive of each of these newspapers? A. The publisher.

Q. The publisher.

I believe you testified that Mr. Mark Collins is the publisher in Baltimore? A. Correct.

Q. Who appointed Mr. Collins, sir? A. I did.

Q. Approximately when? A. I would say five, six, seven years ago approximately.

Q. All right, sir.

Now, what television and radio media are owned by The Hearst Corporation? A. The newspaper here, Mr. Collin's newspaper, The News (38) American—

Q. No, no. What television and radio media? A. Oh! Television and radio.

WBAL-Radio and -TV here in Baltimore; WTAE in Pittsburgh, - Radio and - Television; WISN in Milwaukee, - Television and - Radio; and WAPA in San Juan, Puerto Rico. - Radio.

Q. All right.

What is the title of the chief executive of each of these stations? A. General manager.

Q. I assume, then, that those are the titles of Messrs. Gunts and Burk in Baltimore? A. Correct.

Q. Who appointed them, sir? A. I did. And, as I say, I did upon careful advice from associates and with the permission always of the Board of Directors.

* * * * *

(40) Q. (By Mr. Slaughter) Mr. Berlin, what instructions have you given Mr. Collins, Mr. Gunts and Mr. Burk respecting their authority in the operations of their respective divisions? A. When I appointed them I told each one of the gentlemen that this was their job and they should run it as if they owned it — the paper, the radio, the television station — and if the time came that they were not doing what I considered a satisfactory job and a satisfactory performance in such duties then we would relieve them and put someone else in; but this was their position and they would be held responsible and they would have no interference.

(41) And I think when you consider that there are three executive officers, if I tried to run each one of these newspapers and all of our various divisions I don't know how long I would last, they would have me in a mental institution.

Q. Now, since the appointment of these gentlemen has there been any change in those instructions? A. Not one iota.

And, as a matter of fact, I haven't been in The News American premises — the last time I was in the premises of that paper was, I think, seven years ago when our publisher, Fred Archibald, we were giving him a farewell party, I was present; and I haven't been in the premises of the radio and television division here, or any of our others for that matter, since their opening when they built their new studio. That was x-number of years ago — seven, eight, or whatever it was.

They have complete authority.

Q. All right.

Directing your attention to the operation of The News American, who establishes the editorial policy of that paper? A. The publisher.

Q. Mr. Collins? A. (Nods.)

Q. In what respect, if any, does The Hearst Corporation dictate editorial policy to Mr. Collins? (42) A. We do not dictate it. We try to help them. Their voice is the final voice in the selectivity of anything that we send them. We have a national bureau — for instance, we have quite a large and an adequate Washington Bureau that sends copy out to all of our papers of what is happening in Washington in the various departments but it is up to the publisher and his editor, who work together under the publisher's orders, to select what they want and reject what they do not want.

Q. Who establishes the labor relations policies for The News American? A. Mr. Publisher.

Q. Mr. Collins? A. (Nods.)

Q. Who establishes the advertising and circulation policy of The News American and the rates it will charge for both advertising and circulation? A. Mr. Collins.

Q. In what respect, if any, does Mr. Collins consult with you or Mr. Massey in the establishment of these policies?

A. Very seldom if ever. The bottom line is what I am interested in.

Q. Now, if I asked you the same questions concerning the establishment of operations and labor relations policies at WBAL-Radio and -TV what would your answer be, sir?

(43) A. The same. They have complete authority, the people that are running the stations.

Q. And you are referring to Mr. Gunts and Mr. Burk?

A. Right.

(Trial Examiner) Excuse me.

The TV-Radio is one division, is that right? Or are they two divisions? The TV-Radio, is that a single division?

(The Witness) Well, we regard them as a division; that is, you could call it four division, they are in four cities.

(Mr. Slaughter) He is talking about WBAL, sir, - Radio and - TV.

(The Witness) Yes.

(Trial Examiner) That is one division?

(The Witness) Yes.

(Trial Examiner) All right.

Q. (By Mr. Slaughter) What authority do Messrs. Collins, Gunts and Burk have in negotiating and contracting with advertising agencies and various news services? A. Complete authority.

Q. Independent of The Hearst Corporation in New York?

A. Absolutely.

And I could further state on that, there would be no one in New York, no one on my staff that would know the competitive situations that are confronted by either one of these gentlemen, both in television, radio, or the newspapers. (44) They have to do those things themselves. We can't tell them what to do.

Q. What authority do your publishers and your television and radio general managers have with respect to capital expenditures? A. We have a rule passed by the Board of Directors that any of our division heads, such as we are talking about Baltimore at the present time — and this is true of any of them, particularly with regard to newspapers, television, and so forth — in capital expenditures they can spend up to \$10,000 without any consultation at all; from \$10,000 to \$250,000 in capital expenditures, they send it in to me or to the Executive Vice President and then it is brought before the Finance Committee or the Executive Committee; and over \$250,000 it is brought before the Board.

Q. I see, sir.

Now, what authority do they have with respect to operating expenditures? A. Complete authority.

Q. There is no financial limit? A. No restrictions at all on operating expenditures.

Q. Mr. Berlin, what is King Features? A. King Features is a feature organization who employs and has under contract artists, writers, of various types, and is regarded and is known as one of the leading feature organiza- (45) tions in this country.

Q. Is that a division of The Hearst Corporation, sir? A. Yes. They make contracts with writers, comic strip artists. They are the people that I mentioned, another plug for The Yellow Submarine, they are the people that are handling that, et cetera.

Q. Now, are the King features distributed solely within The Hearst Corporation?

(The Witness) Do you mean only to The Hearst Corporation?

(Mr. Slaughter) Yes, sir.

A. No.

(Trial Examiner) Is this a separate division of the Corporation also?

(The Witness) Yes. King Features is owned entirely by The Hearst Corporation and gives to the Hearst papers or allows the Hearst papers, if they want any of their features, at an arm's-length transaction they give them first choice. They don't sell it to them. The newspapers buy it because of the quality of their product.

For instance, when you have comics like Bringing Up Father and Blondie and all these well-known names, writers like Bob Considines, Chamberlains, one after the other, in our papers if Mr. Mark Collins does not want any of those features we will try to sell it to—

(46) (Trial Examiner) To his competitor? A. —to our competitors, and do.

(Trial Examiner) Now, how is this arranged? Does Mr. Collins pay, is there some bookkeeping transaction involved if he decides to use, let us say, Blondie?

(The Witness) Yes. He pays for it.

(Trial Examiner) Does he pay for it?

(The Witness) He pays for it, exactly, out of his operation expenditures.

You just asked me about his operation expenditures. He pays for it out of his operation expenditures.

(Trial Examiner) Well, by "operation expenditures" do you mean expenditures of this type, payroll, materials in everyday use? Is that what you mean?

(The Witness) Yes. Yes. This is what makes the wheels go around — the quality of his writers, and so forth.

Q. (By Mr. Slaughter) Would operating expenditures likewise include, for example, the purchase of a news service? A. Exactly. He can buy whatever news service he wishes. I have noticed — I don't know whether it is in this paper — but I have noticed in many of our papers that we use alongside of our King Features, we use the New York Times — I think Baltimore has. I have seen the slug from the New York Times Bureau, from The Washington Post

Bureau — not here but in other places — from the Los Angeles Times.

(47) He has a perfect right to buy any of them from whomever he wishes.

(Mr. Slaughter) All right, sir. Thank you.

I think that is all I have.

(Trial Examiner) Let me ask at this point—

You said he "buys." How does he get the money? How is this budget of his arranged? How does that come into being?

(The Witness) There we get into another—

Phrase that question again, will you, please, sir?

(Trial Examiner) Well, how does Mr. Collins go about buying? Where do the funds come from?

(The Witness) Well, in a situation like Mr. Collin's they come right out of his bank account. Mr. Collins has got a prosperous paper. He runs it as his own paper. If he wants to buy any of these features he buys them.

(Trial Examiner) Does he have a budget?

(The Witness) Does he have a budget?

(Trial Examiner) Yes—

(The Witness) No.

(Trial Examiner) —In other words, a limitation as to how much he can spend?

(The Witness) He makes his own budget. If he goes overboard he will hear from us, if we think that he is not operating it—

(Trial Examiner) If he is squandering?

(48) (The Witness) Sure. If he starts squandering, why, somebody is watching it.

(Trial Examiner) He files, I take it—

(The Witness) The bottom line, as I say.

(Trial Examiner) Yes. I suppose he files periodic reports with The Hearst Corporation?

(The Witness) Oh, yes.

(Trial Examiner) As to income and expenditures?

(The Witness) Yes, sir.

(Trial Examiner) All right.

(Mr. Slaughter) That is all.

CROSS EXAMINATION

Q. (Mr. Rubenstein) On this point, Mr. Berlin, does not Mr. Collins, Mr. Gunts and Mr. Burk, whom we are concerned with here in Baltimore, submit in advance a budget to The Hearst Corporation as to their proposed expenditures and estimated income for the coming year?
A. (Nods.)

Q. They do not? A. Not to my knowledge. I don't see them if they do.

Q. Well, you did read this transcript, I believe you said in answer to the question? A. Yes, I did. I read it.

Q. Well, I believe there is something in the transcript in the testimony of Mr. Gunts that he in fact does submit a (49) budget to The Hearst Corporation? A. If he submits it, he submits it to the Executive Vice President and it doesn't come across my desk.

Q. Well, actually the Executive Vice President used to be Mr. Markuson and now Mr. Massey would be the person who would have more contact with the divisions than you would, isn't that so? A. Possibly. But his contacts would be almost duplicating mine. He may watch the situation a little more closely with regard to the newspapers but they would be practically the same as mine.

Q. Now let us take with respect to the WBAL Division.

You stated that you appointed Mr. Gunts and Mr. Burk and you gave them certain instructions. When did this occur? Do you recall?

(The Witness) When did it occur?

(Mr. Rubenstein) Yes.

A. —(pauses) — I am trying to think how long ago it was — I would say, subject to being in error, seven or eight years ago.

Q. Well, now, didn't The Hearst Corporation have a resident executive here in Baltimore, a Mr. Provost, who had an office in Baltimore and had responsibility not only for WBAL but also for WISN, these two radio stations, and he actually had an office here? (50) A. At the beginning of our television and radio activities it wasn't a business that we were too familiar with because it was new. We retained Mr.—

What was his name?

(Mr. Rubenstein) Provost.

A. —We retained Mr. Provost, retained him principally —Our counsel had informed me that "You should have someone who could keep in close contact with the Federal Communications Commission and all of their various aspects, of their rules and laws," and so forth, and it was outside of the curricula of any counsel that we had. So, this was his job, plus the acquisition of stations.

As far as him being authorized to give Mr. Gunts or any of our other station managers any orders or working under him, that was not so.

Q. Well, now, Mr. Gunts testified on October 7th — and this is on Page 36 of the transcript — that up until November of 1966 Mr. Provost had the final authority here in Baltimore with respect to labor relations policies and, as a matter of fact, he was the authority here in Baltimore that Mr. Gunts reported to? A. Maybe Mr. Provost told Mr. Gunts that. But he was not the final authority. He had he authority.

(Trial Examiner) Who is "he"?

(The Witness) Mr. Gunts.

(51) (Trial Examiner) Incidentally, WISN; didn't I understand the witness to testify that that is a station outside, a Milwaukee station?

(The Witness) Yes.

(Mr. Rubenstein) That is correct.

And the record shows, at least the prior record shows that Mr. Provost represented two stations, that is, WBAL and WISN, Milwaukee.

(Trial Examiner) That is in the transcript?

(Mr. Rubenstein) That is in the transcript.

(Trial Examiner) All right.

Q. (By Mr. Rubenstein) Well, now, it is true that the collective bargaining agreement of 1965 to 1968, the one that just expired in September, required the approval of an appropriate officer of The Hearst Corporation in addition to the general manager's approval, isn't that so? A. Not to my knowledge.

Q. Could this be so beyond your knowledge? In other words, would you in fact have knowledge of whether this was so, Mr. Berlin? Could this have been set up, for example, by the Executive Vice President? A. I have had a great deal of experience in hiring and retaining people or having them retained. They give unto themselves certain authorities maybe which they do not really possess in order to make themselves a little more important.

(52) That has happened from time to time.

Q. Well, are you saying that the Executive Vice President does not have the authority to come into Baltimore and to make either certain recommendations or to require certain things of the general managers and the publisher here?

(The Witness) The Executive Vice President?

(Mr. Rubenstein) Yes.

A. I have. And he has, if I deputized him to do it.

Q. Well, do you know in fact that Mr. Provost did sign as a representative of The Hearst Corporation and give his approval to the collective bargaining agreement which expired in September of 1968? Do you know for a fact whether he did or not? A. No, I do not.

Q. Is it not true that The Hearst Corporation has certain central policies with respect to the running of a newspaper? Let us talk to the newspaper.

The Board of Directors, have they not laid on certain policies that they wish the publishers to follow with respect to newspapers? A. No.

Q. None at all? A. No.

Q. Well, isn't it true that, for example, there is a similarity of make-up of the Hearst papers; all over the (53) country there is a certain similarity of make-up? Isn't that so? A. There is a certain similarity.

Q. Well, why would that be so? A. That was established many years ago by a very eminent editor called Mr. William Randolph Hearst, Sr., my chief, who hired me; and I learned my business or profession, if one wants to call it that, under his tutelage. He had very definite policies and I think most of these publishers, practically all of our men that have come up through the show, because that is where we get all our good men, have had respect and admiration for our type of a newspaper and, accordingly, I think they have followed it. But many of our papers, I look at many of them today and they certainly are not all alike. They are quite different. Maybe to your eyes you would think that they are alike. To me they are quite different.

(Trial Examiner) He did not actually say he thought they were, you know. He is just asking you.

Q. (By Mr. Rubenstein) Now, with respect to this, you mentioned the publishers, for example, came up through the Hearst organization.

Is it not a policy of the Hearst organization to put people under individual contracts or contracts to the Hearst organization which would enable the Hearst organization, if it so desired, to move them from division to division, from (54) city to city, from radio station to newspaper, from newspaper to radio station? A. I have been told that. I have never seen that.

Q. You have never seen those contracts? A. I have never seen that contract. No. But I have been told that that contract existed but I know it has never been used, never been put in force, to my knowledge.

Q. Well, the contract, for example, that Mr. Collins has is a Hearst Corporation contract— A. Right.

Q. —which is a contract which employs him as publisher of The News American but also reserves to The Hearst Corporation the right to move Mr. Collins to any division that it sees fit, isn't that correct A. (Nods.)

Q. Have you ever seen that contract? A. No. I haven't seen the contract but I know—

He speaks of Mr. Collins. I am perfectly familiar with Mr. Collin's tenure and his work with our various divisions and he wasn't transferred from one to the other.

(Mr. Rubenstein) No. I did not say that he in fact was. I think Mr. Collins did come out of the Hearst organization.

But I am now talking about the contract that he has as publisher of The News American—

And, for the record, it is one of the employment agreements (55) which is—

(Trial Examiner) It will be in the record. The contract will speak for itself, will it not?

(Mr. Rubenstein) All right.

Q. (By Mr. Rubenstein) Now, with respect to King Features and other materials and newsprint, I believe The

News American buys newsprint from the Newsprint Division of Hearst? A. Right.

* * * * *

(55) Q. (By Mr. Rubenstein) Is not the arrangement between King Features, for example, and The News American one of internal bookkeeping? A. I wouldn't say it is of internal bookkeeping. They pay for it. The paper pays for what they buy from King Features. (56) It goes on a balance of what they owe us or what we owe them, et cetera.

Q. Well, now, is it in fact a cash transaction or is it in fact a bookkeeping credit? A. It's a clearinghouse transaction. It's a clearinghouse transaction in the form of money, not just bookkeeping. They return it to us or we return it to them. As I have used the expression, upstream and downstream dividends.

(Trial Examiner) Well, is there a physical handing over of money involved?

(The Witness) Well, if they wanted to buy x-number of tons of newsprint somebody doesn't hand the money over to you. It's recorded as their assets and liabilities, and so forth, and I imagine it would be — and I am not a banker — I imagine it would be on the same basis of two banks with the business that they are doing back and forth all the time, they are balancing their books.

(Trial Examiner) Well, let me ask you this: Suppose Mr. Collins decides that he would like to have a particular cartoon from King Features—

(The Witness) Right.

(Trial Examiner) —He will of course contact King Features and say, "I want this." Right?

(The Witness) Right.

(Trial Examiner) And he will be told how much it costs (57) to obtain that particular cartoon. Right?

(The Witness) Right.

(Trial Examiner) Let us assume that he is told that for supplying the service for a year — take a real hypothetical figure — it will cost \$10,000—.

(The Witness) Right.

(Trial Examiner) —Now, what does Mr. Collins do? Does he pay, does he write out a check for \$10,000? Or does he just notify King Features or Hearst Corporation to charge Mr. Collins \$10,000 on the books without sending a check?

(The Witness) That is an answer that should be directed, we will say, Your Honor, to our Treasurer or Mr. Collins.

(Trial Examiner) I see. In other words, you are not familiar with this?

(The Witness) I am not entirely familiar with it. But I know this, that that \$10,000 is applied against Mr. Collins's profit or against his loss.

(Trial Examiner) Yes. Well, Mr. Rubenstein has been questioning you — I have no doubt that is the case — he wanted to know if there is a physical transaction involved.

Isn't that what you wanted?

(Mr. Rubenstein) Yes.

(Trial Examiner) All right.

(Mr. Slaughter) Mr. Examiner, Mr. Collins will be testifying.

(58) (Trial Examiner) All right.

(Mr. Rubenstein) All right. I have no further questions.

(Trial Examiner) All right. Anything further?

(Mr. Doyle) Just one or two, if you please, sir.

REDIRECT EXAMINATION

Q. (By Mr. Doyle) Mr. Berlin, in cross-examination you were asked about the execution or approval of union contracts.

Does anybody in The Hearst Corporation in New York involve themselves directly in the approval or execution of union contracts involving your various operating divisions?
A. No.

Q. Is there any requirement that those contracts be sent to New York for prior approval? A. No requirement at all.

Q. Where are those contracts negotiated? A. At the point. Baltimore, in Baltimore.

Q. And by whom? A. The publisher, the man that is in charge, with his labor lawyers and with his counsel.

Q. And who has authority to execute those contracts once they are approved? A. The publisher. The manager.

* * * * *

(60) (Mr. Doyle) Mr. Examiner, the stipulation relates to the proper title of the company that relates to the division heads here in Baltimore and it is stipulated that the proper title for Mr. Burk and Mr. Gunts is Vice President and General Manager, WBAL Division, The Hearst Corporation; and the proper title for Mr. Collins is Vice President and Publisher, News American Division, The Hearst Corporation.

(Trial Examiner) All right.

Is that stipulation acceptable?

(Mr. Rubenstein) Yes.

(Trial Examiner) All right.

(Mr. Slaughter) If the Examiner please, Mr. Nelligan will call our next witness.

(Trial Examiner) All right.

(Mr. Nelligan) Mr. Collins.

MR. MARK F. COLLINS,

was called as a witness by and on behalf of the General Coun- (61) sel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (Mr. Nelligan) State your name and address, please, Mr. Collins? A. My name is Mark F. Collins and I reside at 211 Wendover Road, Baltimore.

Q. What is your occupation, sir? A. I am the Publisher of The Baltimore News American.

Q. How long have you been in that capacity? A. I will be in that capacity five years this coming January 2nd.

Q. And the position of Publisher, as Mr. Berlin testified, is the top executive position, is that correct? A. That is correct.

Q. Would you relate to us your employment history — Well, let me take that back.

Relate for us your employment history over the last twenty years or so? A. Well, I joined the Hearst group in 1949 in Albany, New York, and I was with them until 1953. I left to go with The Boston Post, which was not a Hearst property, and I was with The Boston Post about fourteen months and I returned to The Hearst Corporation—

Q. Let me stop you just there, Mr. Collins.

(62) What were your capacities at Albany and Boston? A. I was Retail Advertising Manager of The Albany Times Union when I went to Boston, and I went to Boston as the Advertising Director of The Boston Post.

—Then I returned to Albany and The Hearst Corporation in 1955 as Advertising Director, and then subsequently I became Advertising Director and Assistant Publisher.

Then I left Albany in 1960 for The Boston Record American, which was a Hearst Corporation paper, as Advertising Director and Assistant Publisher.

Then I came to Baltimore in January of 1964 as Publisher.

Q. Now, in moving about in these various Hearst properties, where did the initiative come for these moves? A. From myself.

Q. Were you a party at those times to personal service contracts with The Hearst Corporation? A. Yes. In every instance. As a matter of fact, even with The Boston Post I had a personal service contract.

Q. Now, as Publisher what are your responsibilities with The News American? A. Well, I have the over-all responsibility for the property. As you know, we are divided into sort of departments. We have primarily, of course, our Editorial Department which puts together our product, we have an editor in charge of that. Then we have an Advertising Department and they are charged (63) with the responsibility of soliciting the advertising for the property, and we have an Advertising Director in charge of that. We have a Circulation Department, and their responsibility lies in the area of circulating the newspaper, delivering it to the customers, and they have a Circulation Director. Then we have, of course, the problem of the production end of it. We have a Production Manager. Then, of course, we have the problem of promoting the newspaper. We have a Promotion Manager.

So, I would guess, you might say that my responsibilities lie largely in the coordinating of these various departments and the ultimate decisions dealing with these departments.

Q. What about with respect to labor relations? A. Well, that would be the same thing. Our Business Manager and his assistant by and large do most of the direct labor negotiations either with the separate contracts which we have or those which we have jointly with The Sun Papers, and they do the actual negotiating. But, however, I am in touch with them and it is my ultimate responsibility to pass on these contracts.

Q. On the question of those contracts, Mr. Collins, do any of the current labor agreements to which The News American is a party with the variety of unions at the prop-

erty, is there not a clause in that contract requiring the approval of The (64) Hearst Corporation before it becomes effective? A. Not in our contracts.

Q. Now, you were present this morning, were you not, when Mr. Berlin testified? A. Yes, I was.

Q. You heard him testify with respect to the authority and responsibility held by you in the areas of the day-to-day operations, of the labor relations policies of The News American. How would you characterize that testimony as being a description of your responsibilities and authority? A. I would say that it was an accurate one.

Q. Who is your Business Manager? A. Mr. Melvin Street.

Q. Now, there was some testimony in the District Court proceeding with respect to the hiring of Mr. Street—

Incidentally, where does Mr. Street stand in the hierarchy of local management? A. Well, technically I would say he is the second in command, but there are some areas in which his influence does not permeate. For example, in the Editorial Department.

Q. All right. How did Mr. Street come to be hired? A. Well, I was aware of Mr. Street — First of all, let me say this, that we had a business manager who retired and it was my responsibility naturally to replace him; and I happened to know of Mr. Street and the fact that he had been (65) doing quite an outstanding job up in New York state as the head of the New York State Publisher's Association. I knew his background, which included a legal background, and the experience that he had primarily in negotiating labor contracts, and so forth. I was quite impressed with that and I did a considerable amount of checking with people who I knew in New York state and who were familiar with him, plus the fact that he had at one time worked at The News American and was a Baltimorean and I felt that was highly desirable, to hire someone of this type. So, I commenced negotiations with him.

Q. And who concluded the negotiations? A. I commenced them and I concluded them.

Q. Including salary arrangements? A. Everything.

Q. Now, at anytime throughout the prospecting for Mr. Street or the actual hire of Mr. Street was your activity directed by or ratified by New York? A. No, it was not.

Q. Incidentally, when was it that you hired Mr. Street? A. I believe that was about a year ago last April, somewhere in that vicinity.

Q. Now, there has been some testimony here this morning by Mr. Berlin with respect to King Features and the sale of their service to The News American. Could you describe for (66) us how that is accomplished? A. Well, I heard the testimony this morning and, as I recall it, there was some confusion or some question as to the billing of these particular features.

There is no cash that exchanges per se. We have like a clearinghouse and we don't make out a check directly and so on, we establish a credit to — In other words, we negotiate with King Features for a particular feature. They will offer us a feature and they will tell us what the price is and we might haggle a little bit about the price if we want it. We might accept it or we might not accept the feature at all. But, in any event, if we do conclude a contract on it, then we notify our Accounting Department that we have made this commitment to King Features for X-amount of dollars per month or per week, whichever — some features vary whether they are weekly or monthly — and so we notify our Accounting Department and they in turn set up that and they handle it; and I don't know the technicalities of it except I am familiar with the fact that no cash changes hands per se, except that I know it comes out of my P & L.

Q. All right. Mr. Berlin also testified with respect to your authority in determination of The News American's editorial policy. Particularly along that line, did the News American endorse a presidential nominee prior to the election?

(The Witness) This year?

(67) (Mr. Nelligan) Yes, sir.

A. Yes, we did.

Q. Who was that? A. Nixon—

* * * * *

(68) Q. (Mr. Nelligan) How did that determination come to be made, Mr. Collins, with respect to an endorsement of a presidential nominee? A. It was made in consultation with my Editor and we made the final determination of it.

Q. Was there not any recommendation from any other source, particularly New York? A. I get recommendations everyday up and down the street. No one from our organization, no official recommendation. Absolutely none.

(Trial Examiner) What do you mean "our organization"?

(The Witness) Well, when he said we get recommendations, Your Honor, everytime you circulate around someone is suggesting that you do this editorially or you do that editorially. So, we get all kinds of recommendations but no official recommendation from anyone in our organization.

(Trial Examiner) All right.

(The Witness) Aside from the Editor and myself.

(Trial Examiner) Well, the readers make recommendations, don't they?

(The Witness) Absolutely.

* * * * *

(69) Q. (Mr. Nelligan) Mr. Collins, I hand you a newspaper clipping marked General Counsel's Exhibit 3(a) and (b), it is in two pages, and I will ask you if you can identify that, please?

(Documents handed to witness.)

A. This is a Sunday News American of October 20th.

Q. All right. Now, on the inside page, which is GC-3(b), which appears to be the editorial page — Is that correct?

A. That is correct.

Q. —and in the left-hand column there is a title called "The Case for Nixon." Briefly can you identify what that is?

(Mr. Rubenstein) Objection.

(Trial Examiner) What is the relevancy of this?

(Mr. Nelligan) The relevance of both of these documents, Mr. Examiner, is that the one held by the witness is an editorial by The News American endorsing Richard Nixon; (70) the one held in my hand features a column written by William Randolph Hearst, Jr. who describes himself as Editor-In-Chief of The Hearst Newspapers in which he makes a contrary endorsement.

(Mr. Rubenstein) I would like to call to the attention of the Trial Examiner that the Complaint was issued in this case on October 7th and I think any materials that are brought in subsequent to October 7th are completely irrelevant.

(Trial Examiner) I will let it in.

Go ahead.

In any event, you got in your point about endorsement.

(Mr. Nelligan) Well, we are not finished yet. Actually we have more to go.

(Trial Examiner) Well, I am making reference to the prior attempt to bring out who was endorsing what.

(Mr. Slaughter) Mr. Examiner, the main thrust of this is not which one of the candidates was endorsed; it is the fact of a different endorsement—

(Trial Examiner) I understand you want to show independence. All right.

(Mr. Levine) We again submit to you, Mr. Examiner, that any position taken by The Hearst Corporation con-

cerning endorsement or nonendorsement or favoring in any manner of any candidate subsequent to the issuance of the Complaint in this case is irrelevant to the issues involved.

(71) (Trial Examiner) Your objection is noted.

All right. Continue.

Q. (Mr. Nelligan) All right. Mr. Collins, the inside page, 3(b) entitled "The Case for Nixon:" Can you tell us what that is briefly? A. Well, that is our editorial endorsement of Mr. Nixon as the candidate for 1968.

Q. All right. Now let me hand you General Counsel's Exhibit 4(a) and (b) and ask you what that is?

(Documents handed to witness.)

A. That is a Sunday newspaper dated November the 3rd of The News American.

Q. And on the outside page, namely 4(a), down at the bottom there is a column as I indicated earlier entitled "Hubert Humphrey Is My Choice" written by William Randolph Hearst, Jr. Could you just summarize for us what that is about? A. Well, that is a reflection of Mr. Hearst's personal views and who he felt should be the next President of the United States. And he writes a column for us regularly and he is able to express his opinion the same as our other columnists.

(Trial Examiner) Is Mr. Hearst's connection or official status in the record in the court proceeding?

(Mr. Rubenstein) No, it is not. There is no identification of his connection at all with the existing Hearst Corporation. As a matter of fact, the record shows that Mr. Hearst is not an officer because Mr. Berlin named the three operating officers.

(Trial Examiner) All right.

Will you develop that point. The question is: What is Mr. William Randolph Hearst's connection with The Hearst Corporation and any of the companies here involved. Will you develop that aspect.

(Mr. Nelligan and Mr. Doyle confer.)

(Trial Examiner) Well, since there is a lengthy pause, I will ask the witness.

Do you know what Mr. Hearst's connection is, first of all, with The Hearst Corporation?

(The Witness) Yes, I do. He is the Chairman of the Board of The Hearst Corporation.

(Trial Examiner) All right.

Now, what is his connection, if any, with your newspaper, The News American?

(The Witness) Well, Mr. William Randolph Hearst, Jr. carries the title of Editor-In-Chief and this, I presume, is a carry-over from the days when his father was the Editor-In-Chief of The Hearst Newspapers and, as I understand it, he took up the title at the demise of his father.

(Trial Examiner) He inherited the title?

(The Witness) Yes. I would say that is a good way of (73) putting it.

(Trial Examiner) Or was it bequeathed to him?

(The Witness) Well, sir, in any event he has the title of Editor-In-Chief.

(Trial Examiner) All right.

And what is your title?

(The Witness) My title is Publisher of The Baltimore News American.

(Trial Examiner) All right.

You may proceed.

(Mr. Nelligan) I offer General Counsel's Exhibits 3(a) and (b) and 4 (a) and (b).

(Mr. Rubenstein) Objection.

(Trial Examiner) Objection overruled.

They are admitted.

(Whereupon, the documents above-referred to, heretofore marked General Counsel Exhibits 3(a) and (b) and 4(a) and (b) for identification, were received in evidence.)

Q. (Mr. Nelligan) Mr. Collins, do you have personal knowledge of the positions held by other Hearst Newspapers with respect to presidential nominees during this campaign which ended yesterday? A. Yes, I do.

Q. Could you tell us what they are?

(74) (Mr. Rubenstein) Objection.

(Trial Examiner) Well, I will let it in, in line with my prior ruling.

(Mr. Rubinstein) Well, it would seem to me that what some other newspaper did is completely irrelevant to the issues here.

(Trial Examiner) Well, in issue also is The Hearst Corporation itself, its status, its standing, its relationship with the rest of the complex.

Answer the question.

A. Well, our Seattle paper, and our Los Angeles paper, our San Antonio paper, and one of our papers in Albany, and the Baltimore paper supported Mr. Nixon. The Boston Record American, the San Francisco Examiner and the Albany Knickerbocker News supported Mr. Humphrey.

(Mr. Nelligan) Mr. Examiner, we have asked to have copies of those editorials made available to us from the various papers. We have not received them.

(Trial Examiner) Well, it is not necessary.

(Mr. Nelligan) That is all.

(Mr. Doyle) May I ask a question or two, Mr. Examiner?

(Trial Examiner) Yes.

DIRECT EXAMINATION (Continued)

Q. (Mr. Doyle) Mr. Collins, in connection with your testimony regarding William Randolph Hearst and his title as (75) Editor-In-Chief, what, if any, contact does he have with your paper in connection with that title? A. Well, I would say the principal contact is the fact that he supplies, or he is one of our regular columnists. We run W. R. Hearst every Sunday as a column just the same as we run Art Buchwald three days a week, and so forth down the line.

Q. Have you assumed any obligations or have there been any directives to you with regard to whether or not that column runs? A. I have never received any directives to it in regard to the column. It was running when I came. It is still running — well, I have answered your question — and I have no reason not to run it anymore than I have no reason not to run Art. Buchwald or Bob Considine or any of the rest of them.

Q. What is your authority in connection with whether in fact it does run or not? A. Why, I would have the authority naturally — the same as any of our columns — if we felt there was something objectionable in it that would certainly jeopardize our readers, or for any other reason, we would not run it.

Q. That would be your determination to make? A. That would be my determination.

Q. Which you would be free to make? A. I would be free to make it.

(Mr. Doyle) That is all.

(76) CROSS EXAMINATION

Q. (Mr. Rubenstein) Mr. Collins, have you ever exercised that freedom?

(The Witness) In regard to any of our columnists?

Q. With regard specifically to Mr. Hearst? A. Specifically, no. I have not, Mr. Rubenstein.

Q. Now, with respect to the election, was there not communication from The Hearst Corporation which in a sense released you to make your own endorsements? A. If there was it was not to my knowledge, and I would assume that I would have knowledge of it.

There was no direct—

(The Witness) Do you mean a directive to the effect that "You will select your own," or, "You will not select them," and so on.

(Mr. Rubenstein) Well, let me phrase it this way—

Q. (Mr. Rubenstein) I read in Newsweek, in their column on the press and what the press was doing during the election, that Hearst had released its newspapers and had now permitted its newspapers to endorse individually those candidates that they wanted to endorse.

Now, my question is: Is that statement that was in Newsweek, is that a correct statement? Had there been some communication which said that you were free, or that you can do it? (77) A. Well, interestingly enough, I also read that and to me it was informational because — Let me say this: I came in 1964, so the first presidential election that I had as a publisher of Hearst papers was 1964; and at that time we were asked who we felt should be the President of the United States at that time—

Q. Asked by whom? A. By our editorial office in New York. We have an editorial office in New York.

—and we were asked who we supported and we registered our support; and we were very pleased to learn that our selection was in accord apparently with the rest of the company.

Now, this year I received no communication. As I say, that was quite informational to me, too, in Newsweek because you understand that we have elections every year—

(Trial Examiner) I know it was informational but was it correct information? That is the question.

(The Witness) Well, it was correct in the sense that we just went ahead and made our selection on the same basis that we do every year. We have gubernatorial elections, we have senatorial elections, we have local elections—.

(Trial Examiner) No. I do not think you understand my question.

Mr. Rubenstein mentioned this article in Newsweek—

(78) (Trial Examiner) —and he asked you whether it's true when you said it was informational to you also.

The question is: What do you mean by that?

(The Witness) Well, sir, I had no communication from New York whatsoever regarding this. So, when I saw it in Newsweek, it was called to my attention in Newsweek.

(Trial Examiner) In other words, you thought it was incorrect?

(The Witness) Well, I thought it was superfluous, shall we say, sir. Superfluous.

(Trial Examiner) You don't want to knock another paper, is that it?

(The Witness) (Nods.)

Q. (Mr. Rubenstein) Well, in previous presidential elections — now, let us confine ourselves to presidential elections — the various publishers of the Hearst papers had been polled and the Editorial Board of Hearst has come out with an endorsement. Is not that the general practice? A. That is correct.

Q. And this is the first election, is it not so, that such a practice was not followed? A. Well, to my knowledge; because, as I say, we were polled in 1964.

Q. And Mr. Hearst's column, which is now in evidence, is his own personal viewpoint rather than the viewpoint of the (79) Hearst Editorial Board, isn't that correct? A. I would assume so because Mr. Hearst every Sunday expresses various opinions on various subjects the same as

any columnist would; and this certainly did not reflect the Hearst policy.

Q. Mr. Collins, I just want to ask you one other question.

Do you, or does The News American submit a budget to New York in advance? A. We prepare a budget, an annual budget, and a copy of that is sent to our Treasurer in New York and we keep a copy of it here. Who-all sees it in New York I wouldn't know. But we have an annual budget.

Now, we get three other shots at that during the course of the year. We do have a budget.

Q. Right. And your "three other shots at it," so to speak, are also submitted to New York? A. Yes.

(Mr. Rubenstein) That is all the questions I have.

(Trial Examiner) All right.

Any redirect?

REDIRECT EXAMINATION

Q. (By Mr. Doyle) Is it fair to say that the purpose of the budget is for informational purposes?

(Mr. Rubenstein) Objection.

(Mr. Doyle) All right.

(80) Q. (Mr. Doyle) What is the purpose of submitting the budget? A. I would say that very statement; because if I were to send a budget up — I've never had a budget questioned but I'm sure if I sent up a deficit budget someone would want to know why.

Q. You mentioned the election poll taken in 1964. What was your undersanding of the purpose of that poll? A. To find out the consensus of the individual editors and publishers, because apparently the policy had been that it looked much better if we didn't run all over the lot. But at that time they felt that they wanted to make one complete image, so to speak.

Q. Is it your understanding that the ultimate endorsement reflected the majority opinion of that consensus? A. It was my understanding when we were polled that that's why we were polled; and I have no reason to believe that the cards were stacked, that this is the way it came out.

Incidentally, it happened to be President Johnson.

Q. And there was no such poll taken in 1968? A. No poll taken and no poll mentioned.

(81)

RECROSS EXAMINATION

Q. (Mr. Rubenstein) Was it your testimony, when you were talking about William Randolph Hearst, Jr., that he is Editor-In-Chief of The News American? A. No.

Q. Or Editor-In-Chief of all the Hearst papers? A. Well, if I might be permitted to clarify this.

He carries a title of Editor-In-Chief and as such I would guess that he derives this title, first of all, as His Honor has pointed out, which he inherited. As such, we have a Hearst Headline Service that operates in New York and in Europe and in the U.N. It's a Hearst News Service. And he would normally head up that as Editor-In-Chief.

Q. Now, what would be the function of the Editorial Board, the Hearst Editorial Board in New York that you mentioned? What would their function be? A. Well, when I say Editorial Board — I don't know, I'm not familiar that there's a Board per se. There is an editorial office in New York. Bill Hearst is the national editor and several editorial writers and it's a group in New York that are editorial offices per se.

Q. What is their function with respect to the Hearst Newspapers? A. Well, I would say primarily to direct the activities of (82) the Hearst Headline Service.

Q. Now, the Hearst Headline Service is what? What is the Hearst Headline Service? A. The Hearst Headline Service is a news service that's provided to the Hearst papers and they cover Washington in a little different man-

ner than we purchase from A.P. or from U.P.I. You get background material that we aren't able to secure otherwise. Or we can call for assignments for them or give them leads in Washington, and so forth, which they have the personnel to follow up.

Q. Is the Hearst Headline Service, if you know, available to papers other than Hearst papers? A. I wouldn't—. No. I would doubt if it is. I wouldn't know specifically.

* * * * *

(84) (Mr. Rubenstein) I say, to take judicial notice of the F.C.C. records with respect to the license and the application therefor filed by WBAL with the F.C.C.

(Trial Examiner) Which is what? Which will show what?

(Mr. Rubenstein) Which will show the ownership.

(Trial Examiner) Now, will you state the ownership for the record?

(Mr. Rubenstein) Yes.

The license states the ownership to be The Hearst Corporation.

(Trial Examiner) All right.

If there is no objection, I will take official notice to that effect unless I hear to the contrary within five days of the conclusion of this hearing.

This matter was discussed off the record and it was agreed that this procedure would be satisfactory to all concerned.

Is that correct, Mr. Doyle?

(Mr. Doyle) Yes, sir.

(Trial Examiner) Do you concur in that?

(Mr. Slaughter) Yes, sir.

* * * * *

RESPONDENT'S EXHIBIT 1(A)

AFTRA—WBAL BASIC MINIMUM AGREEMENT

AGREEMENT made this 11th day of September, 1963 between the American Federation of Television and Radio Artists, AFL-CIO, a voluntary association organized and existing under the laws of the State of New York, and having its principal office at 724 5th Avenue, New York, New York, and its Washington, D.C. Local, part of the first part (hereinafter called "AFTRA"), and WBAL Division - The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and having its principal office at 3800 "Hooper Avenue, Baltimore Maryland, party of the second part (hereinafter called "Company"), owning and operating stations WBAL-AM-FM and WBAL-TV hereinafter called "Station").

14. National Board Approval: This Agreement is subject to consideration and approval by the National Board of AFTRA and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA.

In Witness Whereof, the parties have hereunto affixed their hands and seals the day and year first above written.

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, AFL-CIO

By:

By:

NATIONAL REPRESENTATIVE

WBAL DIVISION—THE HEARST CORPORATION

By:

By:

Approved:

AFTRA NATIONAL BOARD

By:

NATIONAL EXECUTIVE SECRETARY

Date:

ner than we purchase from A.P. or from U.P.I. You get background material that we aren't able to secure otherwise. Or we can call for assignments for them or give them leads in Washington, and so forth, which they have the personnel to follow up.

Q. Is the Hearst Headline Service, if you know, available to papers other than Hearst papers? A. I wouldn't—. No. I would doubt if it is. I wouldn't know specifically.

* * * * *

(84) (Mr. Rubenstein) I say, to take judicial notice of the F.C.C. records with respect to the license and the application therefor filed by WBAL with the F.C.C.

(Trial Examiner) Which is what? Which will show what?

(Mr. Rubenstein) Which will show the ownership.

(Trial Examiner) Now, will you state the ownership for the record?

(Mr. Rubenstein) Yes.

The license states the ownership to be The Hearst Corporation.

(Trial Examiner) All right.

If there is no objection, I will take official notice to that effect unless I hear to the contrary within five days of the conclusion of this hearing.

This matter was discussed off the record and it was agreed that this procedure would be satisfactory to all concerned.

Is that correct, Mr. Doyle?

(Mr. Doyle) Yes, sir.

(Trial Examiner) Do you concur in that?

(Mr. Slaughter) Yes, sir.

* * * * *

RESPONDENT'S EXHIBIT 1(A)

AFTRA—WBAL BASIC MINIMUM AGREEMENT

AGREEMENT made this 11th day of September, 1963 between the American Federation of Television and Radio Artists, AFL-CIO, a voluntary association organized and existing under the laws of the State of New York, and having its principal office at 724 5th Avenue, New York, New York, and its Washington, D.C. Local, part of the first part (hereinafter called "AFTRA"), and WBAL Division - The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and having its principal office at 3800 "Hooper Avenue, Baltimore Maryland, party of the second part (hereinafter called "Company"), owning and operating stations WBAL-AM-FM and WBAL-TV hereinafter called "Station").

14. National Board Approval: This Agreement is subject to consideration and approval by the National Board of AFTRA and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA.

In Witness Whereof, the parties have hereunto affixed their hands and seals the day and year first above written.

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, AFL-CIO

By:

By:

NATIONAL REPRESENTATIVE

WBAL DIVISION—THE HEARST CORPORATION

By:

By:

Approved:

AFTRA NATIONAL BOARD

By:

NATIONAL EXECUTIVE SECRETARY

Date:

RESPONDENT'S EXHIBIT 1(B)

AFTRA—WBAL BASIC MINIMUM AGREEMENT

AGREEMENT made this 8th day of September, 1965 between the American Federation of Television and Radio Artists, AFL-CIO, a voluntary association organized and existing under the laws of the State of New York, and having its principal office at 724 5th Avenue, New York, New York, and its Washington, D.C. Local, party of the first part (hereinafter called "AFTRA"), and WBAL Division—The Hearst Corporation, a corporation organized and existing under the laws of the State of Delaware, and having its principal office at 3800 Hooper Avenue, Baltimore, Maryland, party of the second part (hereinafter called "Company"), owning and operating stations WBAL-AM-FM and WBAL-TV (hereinafter called "Station").

14. Approval: This Agreement is subject to consideration and approval by the National Board of AFTRA and by the Hearst Corporation and shall not become binding and effective upon either party of this Agreement until it has been countersigned by the National Executive Secretary of AFTRA and the appropriate Executive of The Hearst Corporation.

In Witness Whereof, the parties have hereunto affixed their hands and seals the day and year first above written.

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, AFL-CIO

By:

By:

Approved:

AFTRA NATIONAL BOARD

By:

Date:

WBAL DIVISION—THE HEARST CORPORATION

By:

By:

Approved:

RADIO-TV DIVISION—THE HEARST
CORPORATION

By:

Date:

RESPONDENT'S EXHIBIT No. 2

MEMORANDUM OF AGREEMENT, made in the City of New York, the 30th day of April, 1968, by and between The Hearst Corporation (Baltimore News-American Division), a Delaware corporation, (hereinafter referred to as "Hearst"), and Frank A. DeFilippo of Baltimore, Maryland, (hereinafter referred to as "Employee").

Whereas, Employee possesses special, unique and original ability, and Hearst desires to secure his exclusive services for the period and on the terms hereinafter mentioned, which employment Employee desires to secure and accept.

Now, Therefore, in consideration of the compensation and the mutual provisions and conditions herein contained and the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, this Agreement.

Witnesseth:

First: Hearst hereby employs Employee as set forth on attached rider and Employee agrees to render his services to Hearst as such rider more particularly provides, together with such other services relating thereto as shall be required of him from time to time by Hearst (and in the event of a transfer of Employee or an assignment of this Agreement, as hereinafter provided, Employee agrees to

render to the transferee or assignee hereof such services as may be required of him from time to time by such transferee or assignee) for the period commencing with the 1st day of June, 1968, and extending to and terminating on the 31st day of May, 1969. Employee hereby accepts the aforesaid employment and agrees to render his exclusive services hereunder on the terms and conditions herein set forth.

Second: Hearst agrees to pay to Employee and he agrees to accept from Hearst, as compensation for his services hereunder, the remuneration provided in the Rider attached hereto and made a part hereof.

Third: To induce Hearst to enter into this Agreement and to pay the compensation herein provided, Employee agrees:

(a) That he will faithfully and diligently execute all instructions that may be given him by Hearst, or by any transferee or assignee hereof, with respect to his duties hereunder.

(b) That he will work for, and render services to, Hearst, or for or to, as the case may be, any property to which he may be transferred or any other corporation to which this Agreement may be assigned, in accordance with the terms of paragraph "Sixth" hereof, exclusively, and that he will give and devote to the pursuit of his duties his full, complete and exclusive time, his best skill, attention and energy, and that during the term of his employment he will not perform any work, render any services or give any advice, gratuitously or otherwise, for or to any other person, firm or corporation. Should there be a violation or attempted or threatened violation of this provision, Hearst, or any transferee or assignee hereof, may apply for and obtain an injunction to restrain such violation or attempted or threatened violation, to which injunction Hearst, or any transferee or assignee hereof, shall be entitled as a matter of right, Employee conceding that the services contemplated by this Agreement are special, unique and extraordinary, the loss of which cannot reasonably or adequately be compensated in damages in an action at law, and that the

right to said injunction is necessary for the protection and preservation of Hearst's rights and the rights of any transferee or assignee hereof, and to prevent irreparable damage to Hearst and to any such transferee or assignee. Such injunctive relief shall be in addition to such other rights and remedies as Hearst, and any transferee or assignee hereof, may have against Employee arising from any breach hereof on his part.

Fourth: This Agreement shall terminate and Employee's employment and his compensation hereunder shall cease: (a) upon his death and (b) at the option of Hearst:

(i) Upon any failure by him to observe or perform his agreements herein contained; or

(ii) Upon his neglect of the faithful performance of his duties hereunder.

Fifth: It is understood and agreed that Employee shall be entitled to a reasonable vacation during the term hereof.

Sixth: The Hearst Corporation shall have the right to transfer Employee to any of its divisions or to any property operated, directly or indirectly, by it, or to assign this Agreement to any corporation owned or controlled, directly or indirectly, by it.

Seventh: Hearst shall have an option to renew this Agreement upon the same terms and conditions as herein specified for a further period of one year by giving notice to Employee of Hearst's intention to renew. Said notice may be given at any time prior to the 30th day of April, 1969.

In the event that Employee shall continue in the aforesaid employment after the expiration of either (a) the initial term hereof, or (b) the renewal term hereof (if the option herein shall have been exercised) then, and in either of those events, this Agreement shall be, and be deemed to be, extended from month to month at the rate of salary provided in the Rider attached hereto and made a part hereof and shall be terminable at the end of any month by either party giving to the other fifteen days' notice in writing of his or its intention to terminate the said Agreement.

Eighth: It is understood and agreed that wherever any words are used in this Agreement in the masculine gender, they shall be construed as though they had been used in the feminine gender when the context so requires.

In Witness Whereof, Hearst has caused this Agreement to be executed in its corporate name by its Vice President thereunto duly authorized and its corporate seal to be hereunto affixed and duly attested by its Assistant Secretary, and Employee has hereunto set his hand and seal, in quadruplicate, the day and year first above written.

THE HEARST CORPORATION
(Baltimore News-American Division)

By: MARK F. COLLINS,

Vice President.

FRANK A. DeFILIPPO (L.S.)

Attest:

W. M. STREET,

Assistant Secretary.

RIDER TO AGREEMENT DATED THE 30th DAY OF APRIL, 1968 BY AND BETWEEN THE HEARST CORPORATION (BALTIMORE NEWS-AMERICAN DIVISION) AND FRANK A. DeFILIPPO.

1. It is understood and agreed that the exclusive services to be rendered by Employee hereunder will be as a Political Writer for The News American.

2. Hearst agrees to pay to Employee and he agrees to accept from Hearst, as full and complete compensation for his services hereunder, the weekly salary of payable at the end of each and every week, during the period commencing with the 1st day of June, 1968 and extending to and terminating on the 31st day of May, 1969.

3. All columns or writings furnished by Employee hereunder shall belong to and be the exclusive property of Hearst, which may duly protect the same by copyright or

otherwise, and which shall have all of the exclusive rights therein accorded to the author of the copyrighted work, as well as all the property rights in and to such columns or writings that may be accorded to the author or owner thereof under any law.

4. It is further mutually understood and agreed that during the period of, and after the expiration of, this Agreement or after the termination of his employment (whether such employment is pursuant to the terms of this Agreement or otherwise) Employee will not prepare, use, sell or deliver to or for any other person, firm or corporation other than Hearst or an affiliate or subsidiary of Hearst (hereinafter in this paragraph collectively referred to as "Hearst"), any material, including, but not limited to, any title or characters depicted therein, furnished to or used by Hearst during such time as Employee is in the employ of Hearst and Employee will not prepare, use, sell or deliver any colorable imitation, adaptation or simulation of any material furnished by him to Hearst (whether furnished hereunder or otherwise), or use any title, mark or name substantially similar to that utilized in connection with work of Employee or material furnished by Employee under this Agreement or otherwise, furnished by him to Hearst. Should there be a violation or attempted or threatened violation by Employee of any of the provisions contained in this paragraph 4, Hearst shall be entitled to the same rights and relief by way of injunction and other remedies as are provided for under paragraph "Third" hereof.

THE HEARST CORPORATION
(Baltimore News-American Division)

By: MARK F. COLLINS,
Vice President.

FRANK A. DEFILIPPO (L.S.)

RESPONDENT'S EXHIBIT No. 2

MEMORANDUM OF AGREEMENT, made in the City of New York, this 11th day of October, 1966, by and between

The Hearst Corporation (Baltimore News American Division), a Delaware corporation, (hereinafter referred to as "Hearst"), party of the first part, and John F. Steadman of Baltimore, Maryland, (hereinafter referred to as "Steadman"), party of the second part.

Whereas, Steadman possesses special, unique and original ability, and Hearst desires to secure his exclusive services for the period and on the terms hereinafter mentioned, which employment Steadman desires to secure and accept,

Now, Therefore, in consideration of the compensation and the mutual provisions and conditions herein contained and the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, this Agreement.

Witnesseth:

First: Hearst hereby employs Steadman as Sports Editor of The News American and Steadman agrees to render his services to Hearst as such Sports Editor, together with such other services as shall be required of him from time to time by Hearst, exclusively, except as hereinafter provided, for a period of two years, commencing with the 3rd day of October, 1966, and extending to and terminating on the 2nd day of October, 1968, which employment Steadman hereby accepts on the terms following.

Second: Hearst agrees to pay to Steadman and he agrees to accept from Hearst, as full and complete compensation for his services hereunder, the weekly salary of _____, payable at the end of each and every week, during the period commencing with the 3rd day of October, 1966, and extending to and terminating on the 2nd day of October, 1967, and _____, payable at the end of each and every week, during the period commencing with the 3rd day of October, 1967, and extending to and terminating on the 2nd day of October, 1968.

Steadman shall also be entitled to and receive, during each year of the term hereof, an expense allowance of _____

per week, which is to be accounted for.

Third: To induce Hearst to enter into this Agreement and to pay the compensation herein mentioned, Steadman agrees:

(a) That he will faithfully and diligently execute all instructions that may be given him by Hearst with respect to his duties hereunder.

(b) That he will work for, and render services to, Hearst, or for or to, as the case may be, any other corporation to which this Agreement may be assigned in accordance with the terms of paragraph "Seventh" hereof, exclusively, and that he will give and devote to the pursuit of his duties his full, complete and exclusive time, his best skill, attention and energy, and that during the term of his employment he will neither perform any work nor render any services or give any advice, gratuitously or otherwise, for or to any other person, firm or corporation, nor will he be or become engaged or interested, directly or indirectly, in any business enterprise or occupation on his own account or otherwise, if such business enterprise or occupation is in any way competitive with Hearst or any subsidiary or affiliate of Hearst or any activity of any of them. Should there be a violation or attempted or threatened violation of this provision, Hearst may apply for and obtain an injunction to restrain such violation or attempted or threatened violation, to which injunction Hearst shall be entitled as a matter of right, Steadman conceding that the services contemplated by this Agreement are special, unique and extraordinary, the loss of which cannot reasonably or adequately be compensated in damages in an action at law, and that the right to said injunction is necessary for the protection and preservation of Hearst's rights, and to prevent irreparable damages to it. Such injunctive relief shall be in addition to such other rights and remedies as Hearst may have against Steadman arising from any breach hereof on his part.

Fourth: It is further mutually understood and agreed that during the period of, and after the expiration of, this Agreement or after the termination of his employment (whether such employment is pursuant to the terms of this Agreement or otherwise), Steadman will not prepare, use, sell or deliver to or for any other person, firm or corporation other than Hearst or an affiliate or subsidiary of Hearst (hereinafter in this paragraph collectively referred to as "Hearst"), any material, including, but not limited to, any title or characters depicted therein, furnished to Hearst during such time as Steadman is in the employ of Hearst and Steadman will not prepare, use, sell or deliver any colorable imitation, adaptation or simulation of any of the material furnished by him to Hearst (whether furnished hereunder or otherwise), or use any title, mark or name substantially similar to that utilized in connection with work of Steadman or material furnished by Steadman under this Agreement or otherwise furnished by him to Hearst.

Fifth: Steadman's employment hereunder and his compensation shall terminate upon his death; and at the option of Hearst, Steadman's employment hereunder and his compensation shall terminate:

(a) Upon any failure by him to observe or perform his agreements herein contained; or

(b) Upon his neglect of the faithful performance of his duties hereunder.

Sixth: It is understood and agreed that Steadman shall be entitled to a reasonable vacation during each year of the term hereof.

Seventh: Hearst shall have the right to transfer Steadman to any property operated, directly or indirectly, by it, or to assign this Agreement to any corporation owned or controlled, directly or indirectly, by it.

Eighth: In the event that Steadman shall continue in the aforesaid employment after the expiration of the said period of employment, this Agreement shall be and be

deemed to be, extended from month to month at the rate of salary hereinbefore specified for the second year of the term hereof, together with the expense allowance as hereinbefore provided, and shall be terminable at the end of any month by either party giving to the other fifteen days' notice in writing of his or its intention to terminate the said Agreement.

In Witness Whereof, Hearst has caused this Agreement to be executed in its corporate name by its Vice President thereunto duly authorized and its corporate seal to be hereunto affixed and duly attested by its Assistant Secretary, and Steadman has hereunto set his hand and seal, in quadruplicate, the day and year first above written.

THE HEARST CORPORATION
(Baltimore News-American Division)

By: MARK F. COLLINS,
Vice President.

JOHN F. STEADMAN (L.S.)

Attest:

.....
Assistant Secretary

MAIN TRANSMITTER

FCC Form 303
(October 1963)Form Approved
Budget Bureau No. 53-R016.16

Section I

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSIONAPPLICATION FOR RENEWAL OF
BROADCAST STATION LICENSE

INSTRUCTIONS

A. This form is to be used in all cases when applying for Renewal of Broadcast Station License. It consists of this part, Section I, and the following sections:

Section II, Renewal Application Engineering Data

Section IV, Statement of Program Service of Broadcast Applicant

B. Prepare and file three copies of this form and all exhibits with the Federal Communications Commission, Washington, D.C. 20554

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Attach each exhibit.

D. The name of the applicant must be stated exactly as it appears on the current license.

E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

File No.

Name and post office address of applicant (See Instruction D)

THE HEARST CORPORATION
959 Eighth Avenue - Room 202
New York, New York 10019

Send notices and communications to the following-named person at the post office address indicated:

D. L. Provost, The Hearst Corporation
959 Eighth Ave., (Room 202), New York, NY

1. Renewal requested for following existing facilities 10019

Call letters	Frequency	Channel No.
WBAL-TV	198-204 Mc	11
Power in kilowatts		Minimum hours operation daily
Night	Visual	Day
316	316	See Section IV, Para. 1(a)

Hours of operation

Unlimited <input checked="" type="checkbox"/>	Sharing with (Specify Stations)	Other (Specify)
Daytime only <input type="checkbox"/>		
Limited <input type="checkbox"/>		

Station location

City	State
Baltimore	Maryland

2. Is applicant or any person directly or indirectly controlling applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacturer or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? Yes ☐ No ☒

If the answer is "Yes", attach as Exhibit No. a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. (See Section 313 of the Communications Act of 1934.)

3. Attach as Exhibit No. 1 a detailed balance sheet of the applicant as at the close of a month within 90 days of the date of this application.

4. Is the applicant's Ownership Report filed with this application? Yes ☐ No ☒

(See 1.343(a) of Commission's Rules.)

If answer is "No", give date of filing of last Ownership Report and call letters, station location and file number of renewal application with which it was filed. Report rendered as of 4-15-66, filed with WTAE-TV, Pittsburgh application on 4-29-66. File BRCT-478.

5. Any change in the citizenship of the applicant? Yes ☐ No ☒

6. Is the applicant a representative of an alien or foreign government? Yes ☐ No ☒

7. List below other businesses in which the applicant or any officer, director, or principal stockholder (any person owning 2% or more of applicant's stock) has a 2% or more interest. List also any radio station other than the station which is the subject of this application in which any of the above named persons have any interest, and the nature and extent of their interest in the broadcast station.

Exhibit No. 2

RESPONDENT'S EXHIBIT 3(a)

APP. 140

THE APPLICANT hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this 24 day of June, 1966.

FEES, EFFECTIVE JANUARY 1, 1964, INCLUDE FILING FEE WITH THIS APPLICATION. SEE PART 1 OF FCC RULES FOR AMOUNT OF FEE. DO NOT SEND CASH. MAKE CHECK OR MONEY ORDER PAYABLE TO THE FEDERAL COMMUNICATIONS COMMISSION.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

THE HEARST CORPORATION

(NAME OF APPLICANT)

By

(SIGNATURE)

D. L. Provost, Vice President

Title WBAL Division

EXHIBITS furnished as required by this form:

Exhibit No.	Section and Para. No. of Form	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which)	Official title
	Sec. I, Par. 2	D. L. Provost (2)	Vice President
1	" I, " 3	D. L. Provost (2)	" "
2	" I, " 7	D. L. Provost (2)	" "
3	"IV, " 3b	Brent O. Gunts (2)	Vice Pres. for WBAL-TV
4	"IV, " 4b	Brent O. Gunts (2)	" " " "
5	"IV, " 5a	Brent O. Gunts (2)	" " " "
6	"IV, " 7	Brent O. Gunts (2)	" " " "
7	"IV, " 10	Brent O. Gunts (2)	" " " "
8	"IV, " 12	Brent O. Gunts (2)	" " " "

RESPONDENT'S EXHIBIT 3(a)

App. 141

EXHIBIT NO. 8

(Paragraph 12, Section IV)

The present staff consists of:

Department	Number of Employees			
	Full-time		Part-time	
	TV	Combination TV & Radio	TV	Combination TV & Radio
Program	45	12	4	1
Technical	31	4	-	-
Sales & Promotion	16	-	-	-
General & Administrative	<u>2</u>	<u>34</u>	<u>2</u>	<u>2</u>
Total.....	<u>94</u>	<u>50</u>	<u>4</u>	<u>1</u>

Position	Name	Residence	Citizen- ship
Vice Pres. & General Mgr.-WBAL Division	D. L. Provost	10 Bouton Green Baltimore, Md.21210	USA
Vice Pres. & Manager of WBAL-TV	Brent O. Guntz	5015 Greenleaf Rd. Baltimore, Md.21210	USA
Vice Pres.in Charge of Eng.-WBAL Division	John T. Wilner	6317 Ivymount Road Baltimore, Md.21209	USA
Dir.of Sales & Asst. Station Manager	Willis K. Freiert	515 St.Francis Road Towson, Md. 21204	USA
Program Director	John P.Frankenfield	10 Bramleigh Road Lutherville, Md.	USA
Manager, Community Service	James S. King	5013 Greenleaf Rd. Baltimore, Md.21210	USA
Chief Engineer	Otto R. Claus, Jr.	2116 Southland Road Baltimore, Md.21207	USA
News Manager	Royden S. Meise	108 Livingston St. Salisbury, Md.	USA
Director, Advertising, Promotion & Publicity	Donald R. Peacock	734 N.Linwood Ave. Baltimore, Md.21205	USA
Resident Controller WBAL Division	Clifton E. Harris	905 Adana Road Pikesville, Md.	USA
Director, Building Services	W.D.Newberrey, Jr.	Greenspring Ave.Rt 1 Owings Mills, Md.21117	USA

June 24, 1966

RESPONDENT'S EXHIBIT 3(a)

App. 1472

MAIN TRANSMITTER

10-1-66 Form 101
October 1965

Form Approved
Budget Bureau No. 52-R016,16

Section 1

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF
BROADCAST STATION LICENSE

INSTRUCTIONS

A. This form is to be used in all cases when applying for Renewal of Broadcast Station License. It consists of this part, Section I, and the following sections:

Section II, Renewal Application Engineering Data

Section IV, Statement of Program Service of Broadcast Applicant

B. Prepare and file three copies of this form and all exhibits with the Federal Communications Commission, Washington, D.C. 20554

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Date each exhibit.

D. The name of the applicant must be stated exactly as it appears on the current license.

E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer, if the applicant is a corporation; by a member who is an officer, if the applicant is an unincorporated association; by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction, if the applicant is an eligible government entity; or by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in the event he signs for the applicant, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

File No.

Name and post office address of applicant (See Instruction D)

THE HEARST CORPORATION
959 Eighth Avenue - Room 202
New York, New York 10019

Send notices and communications to the following-named person at the post office address indicated:

D.L. Provost, The Hearst Corporation
959 Eighth Ave., (Room 202) New York, N.Y.

1. Interval requested for following existing facilities 10019

Call letters

WBAL

Frequency

1090 kc

Channel No.

-

Power in kilowatts

Night

50 kw

Day *

50 kw

Minimum hours operation daily

See Section IV,
Para. 1(a)

Hours of operation

(Unlimited)

☒

Sharing with

(Specify Stations)

Other

(Specify)

Daytime only

☐

Limited

☐

Station location

City

Baltimore

State

Maryland

2. Is applicant or any person

Yes ☐ No ☒

directly or indirectly controlling, applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacturer or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition?

If the answer is "Yes", attach as Exhibit No. a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. (See Section 312 of the Communications Act of 1934.)

3. Attach as Exhibit No. 1 a detailed balance sheet of the applicant as at the close of a month within 90 days of the date of this application.

4. Is the applicant's Ownership Report filed with this application?

Yes ☐ No ☒

(See 1.362(a) of Commission's Rules.)

If answer is "No", give date of filing of last Ownership Report and call letters, station location and file number of renewal application with which it was filed. Report rendered as of 4-15-66, filed with WTAE-TV, Pittsburgh application on 4-29-66. File BRCT-478.

5. Any change in the citizenship of the applicant?

Yes ☐ No ☒

6. Is the applicant a representative of an alien or foreign government?

Yes ☐ No ☒

7. List below other businesses in which the applicant or any officer, director, or principal stockholder (any person owning 1% or more of applicant's stock) has a 1% or more interest. List also any radio station other than the station which is the subject of this application in which any of the above named persons have any interest, and the nature and extent of their interest in the broadcast station.

Exhibit No. 2

*Including remote control authorization.

RESPONDENT'S EXHIBIT 3(b)

Approved
1/13

THE APPLICANT hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934).

THE APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

THE APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this 24 day of June, 1966.

FEES, EFFECTIVE JANUARY 1, 1964, INCLUDE FILING FEE WITH THIS APPLICATION. SEE PART 1 OF FCC RULES FOR AMOUNT OF FEE. DO NOT SEND CASH. MAKE CHECK OR MONEY ORDER PAYABLE TO THE FEDERAL COMMUNICATIONS COMMISSION.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT, U.S. CODE, TITLE 18, SECTION 1001.

THE HEARST CORPORATION

(NAME OF APPLICANT)

By

[Signature]

(SIGNATURE)

D. L. Provost, Vice President

Title WBAL Division

EXHIBITS furnished as required by this form:

Exhibit No.	Section and Para. No. of Form	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which)	Official title
	Sec. I, Par. 2	D. L. Provost (2)	Vice President
1	" I, " 3	D. L. Provost (2)	" "
2	" I, " 7	D. L. Provost (2)	" "
3	" II, " 12	John T. Wilner (2)	Vice Pres. in Charge of Engineering
4	" IV, " 5	Alfred E. Burk (2)	Vice Pres. for WBAL
5	" IV-A, " 1A	Alfred E. Burk (2)	" " " "
6	" IV-A, " 12	Alfred E. Burk (2)	" " " "
7	" IV-A, " 1C	Alfred E. Burk (2)	" " " "
8	" IV-A, " 15	Alfred E. Burk (2)	" " " "
9	" IV-A, " 18	Alfred E. Burk (2)	" " " "
10	" IV-A, " 26	Alfred E. Burk (2)	" " " "
11	" IV-A, " 31	Alfred E. Burk (2)	" " " "

RESPONDENT'S EXHIBIT 3(b)

App:144

THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE

PART OF
RESPONDENT'S EXHIBIT NO. 3(b)

Exhibit No. 2

(Paragraph 7, Section I)

Other businesses in which the applicant or any officer, director or principal stockholder has a 25% or more interest:

Applicant

The applicant either owns or controls through ownership of subsidiaries all the businesses of the Hearst organization. It is not believed that the question contemplates the furnishing of detailed information concerning all of these businesses since they all have one common ownership in the Hearst organization.

Interest in other radio stations:

Applicant

WBAL-FM and WBAL-TV Baltimore, WISN, WISN-FM and WISN-TV Milwaukee, and WTAE, WTAE-FM and WTAE-TV Pittsburgh, owned and operated by applicant.

Hearst Radio, Inc., licensee of radio station WAPA, San Juan, Puerto Rico, is a subsidiary of the applicant.

June 24, 1966

PART OF
RESPONDENT'S EXHIBIT NO. 3(b)

Exhibit No. 8

(Question 15, Section IV-A)

- A. WBAL Radio news is currently supplied by a department which employs 22 people (at full strength)—only one of whom is employed on a part-time basis. While ten of these work mainly for WBAL-TV, the

stories and features which they develop are also available for use on WBAL Radio. In addition, three staff announcers devote a major portion of their time to working with the News Department and specialize in presenting the news on the air.

This News Department covers regular "beats" at City Hall and Police Headquarters, while daily assignments send reporters to other areas indicated as important to the news of the day.

It has available three "news cars." They are equipped with mobile radio units which are used exclusively for newsgathering purposes. Equipment is available in the news room for monitoring the radio services of the Baltimore City Police, the State Police and the Baltimore City and Baltimore County Fire Departments, and contact maintained with the Baltimore News-American daily newspaper, so that reporters can be dispatched to the scene of fast-breaking local news events.

The WBAL news room is currently served by the following wire services:

1. United Press International Radio and TV Press Wire
2. Associated Press Radio and TV Press Wire
3. United Press International Sports Wire
4. Western Union Sports Ticker
5. Weather Wire

News staff members are on duty in the news room throughout the day and evening to process news from the general public, and from members of the station staff, each of whom is encouraged to consider himself a source for news items in the community.

- B. It is estimated that thirty percent of news programs will be devoted to local and regional news.

June 24, 1966

TXD—775—68
Baltimore, Md.

*United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Washington, D.C.*

Case 5—CC—446

*American Federation of Television and Radio Artists
Washington-Baltimore Local, AFL-CIO*

Respondent

and

*Baltimore News American Division,
The Hearst Corporation*

Charging Party

*Charles B. Slaughter and Maurice J. Nelligan, Jr., Esqs.,
of Baltimore, Md., for General Counsel.*

*Bernard W. Rubenstein, Esq. (Edelman, Levin, Levy &
Rubenstein), of Baltimore, Md., and Samuel Levine, Esq.,
of Washington, D.C., for Respondent.*

*James J. Doyle, Jr., and Theodore Sherbow, Esqs.
(Sherbow, Shea & Doyle), of Baltimore, Md., for Charging
Party.*

TRIAL EXAMINER'S DECISION

SAMUEL M. SINGER, Trial Examiner: Upon a charge filed on September 23, 1968, by Baltimore News American Division, The Hearst Corporation (herein called News American), General Counsel of The National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on October 7, 1968, alleging that American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO (herein called AFTRA or the Union), had engaged in certain secondary boycott activities prohibited by Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act. In general, the complaint alleged that

in furtherance of its labor dispute with WBAL Division, The Hearst Corporation (herein called WBAL). AFTRA picketed the premises of News American (allegedly a secondary or neutral employer) with objects of (a) inducing employees of News American to strike or withhold their services; and (b) forcing or requiring News American to cease doing business with WBAL and customers and suppliers of News American.

Pursuant to notice, a hearing was held before me in Baltimore, Maryland, on November 6, 1968. The parties were represented by counsel and were afforded full opportunity to be heard and to introduce relevant evidence.

Upon the entire record, the briefs received from the parties, and from my observation of the witnesses, I make the following:

Findings and Conclusions

I. Jurisdiction

WBAL, a division of The Hearst Corporation (a Delaware corporation), maintains and operates radio and television stations in Baltimore, Maryland. It is affiliated with the National Broadcasting Company radio and television networks and has an annual gross revenue exceeding \$1 million.

News American prints, publishes, and distributes a daily and Sunday newspaper in Baltimore, Maryland, known as "News American." It subscribes to interstate news services and nationally syndicated features, and advertises products sold in interstate commerce. News American's annual gross revenue exceeds \$200,000.

I find that WBAL and News American have at all times material been engaged in commerce or industries affecting commerce within the meaning of the Act, and that it is appropriate for the Board to assert jurisdiction.

II. The Labor Organization Involved

Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Introduction, the Issues

The Union has represented WBAL's staff announcers and employees appearing before cameras and microphones for many years, its most recent collective agreement having expired on September 1, 1968.¹ On September 21 — after negotiations for a new contract were broken off — AFTRA struck and picketed WBAL in support of its contract demands. Two days later (September 23), pickets appeared at the News American premises, 6 miles away (also in Baltimore).² As a result, News American employees, represented by unions other than AFTRA, refused to report to work until 11 a.m. on that day when WBAL officials prevailed upon the newspaper unions (Pressmen, Teamsters, etc.) to intervene and AFTRA withdrew its picket line from the News American premises. However, on October 2 and 3 AFTRA pickets reappeared at News American and newspaper employees again refused to cross the picket line. The September 23 and October 2—3 picketing resulted in loss of circulation of some newspaper editions and curtailment of the size of other editions.

Upon a petition of the Regional Director filed on October 2 under Section 10(1) of the Act, the United States District Court for the District of Maryland granted an order temporarily enjoining the picketing at News American. On October 21, the Court issued an opinion rejecting union contentions identical to those presented in the instant complaint proceeding. *Penello v. American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO*, 69 LRRM 2517.³

¹ Unless otherwise indicated, all references are to 1968.

² The picket signs carried the legend: "Information to the Public, Radio and TV performers on strike against WBAL, Division of The Hearst Corporation, American Federation of TV and Radio Artists, AFL-CIO."

³ The transcript of the 10(1) proceeding forms a part of the record in this case by stipulation. The District Court's findings and conclusions are not, of course, binding in this proceeding. See *W. W. Wallwork Fargo, Inc.*, 123 NLRB 91, 113, fn. 33.

In essence, the Union contends that the extension of the picket line to News American was not secondary activity proscribed by Section 8(b)(4) of the Act, on the ground that News American was not a separate or neutral "person" entitled to the protection of that section. According to the Union, the picketing was "primary" since, as "divisions" of The Hearst Corporation ("Hearst"), News American and WBAL constituted one "person" or "part" of one person, namely, of The Hearst Corporation. On the other hand, General Counsel and the Charging Party contend that WBAL and the News American are separate and autonomous operations, both as between each other and as between each and Hearst, with no control over their day-to-day operations by Hearst; and, therefore, that News American is a neutral "person" entitled to the protection of the secondary boycott provisions of the Act.

The findings set forth below concerning the operations of Hearst, WBAL, and News American are based on largely undisputed evidence.⁴

B. Operations of Hearst, WBAL, and News American

The Hearst Corporation, with headquarters in New York City, owns 20 to 30 operating divisions comprising a widely diversified empire. These divisions operate such enterprises throughout the country as newspapers,⁵ radio, television, motion pictures, real estate, timberland, and cattle ranches. Hearst's three executives in New York are its president, executive vice president, and treasurer. As chief executive, the president appoints division heads, including

⁴ The Union called no witnesses in this or in the Court proceeding; it did solicit and secure stipulations of fact and introduced documentary evidence.

⁵ The newspapers include the Seattle Post Intelligence, San Francisco Examiner, Los Angeles Examiner, San Antonio Light, Boston Record American, Albany Times Union, Knickerbachelor News (Albany, New York), and Baltimore News American. Television and radio stations are maintained in Pittsburgh, Milwaukee, Baltimore, and Puerto Rico.

publishers of newspapers and general managers of television and radio stations. During the period here involved, Brent Gunts was general manager of WBAL-TV, Alfred Burk, general manager of WBAL-Radio, and Mark Collins, publisher of New American.⁶ None sits on Hearst's board of directors. However, each is responsible to Hearst's president and executive vice president. Hearst President Berlin testified that he has instructed his division heads to "run it [the division] as if they owned it," but that he has also advised them that "if the time came that they were not doing what I considered a satisfactory job . . . then we would relieve them and put someone else in."

The record establishes that in actual practice each division head has substantially complete authority in the day-to-day operations of his division. Hearst President Berlin emphasized that although a division head would occasionally contact Hearst executives, whom they regard as their superiors, it is only the "bottom line" (i.e., the financial success of the enterprise) that he was "interested in."⁷ News American Publisher Collins has final authority in all matters relating to formulation and effectuation of policy covering news, editorials, production, advertising,

⁶ Each also has the corporate title "vice-president." For example, Gunts' complete title is Vice President and General Manager, WBAL Division, The Hearst Corporation. The television and radio stations together compose one division (WBAL).

⁷ It is clear, however, that until 2 years ago (November 1966), a Hearst executive (Provost), with an office in Baltimore, possessed final responsibility over television and radio operations, including labor relations. (Provost had countersigned and approved the last — September 1965 — collective agreement on behalf of Hearst.) Hearst President Berlin indicated that Provost was given overall jurisdiction over these operations when Hearst embarked into the television and radio field and, not being "familiar" with these industries, needed someone to maintain "close contact" with Federal Communication Commission requirements. It is undisputed, however, that on Provost's retirement in November 1966, Hearst "dissolved" its New York Radio and Television Division, headed by Provost; and that the WBAL television and radio managers were then instructed to operate the stations on their own. It is to be noted that Provost never had any similar connection with News American.

and circulation. Collins, as well as the television and radio managers (Gunts and Burk), determine the size of their own staffs, hire and fire, fix employee salaries, set advertising rates and service charges, and formulate and implement labor relations policies. Each division subscribes separately to news services such as the Associated Press and United Press, is free to utilize any or none of Hearst-owned services and features (e.g., Hearst Headline Service, King Features) or syndicated columns, and controls its own editorial policies.⁸ A short-lived arrangement for an exchange of news between News American and WBAL some 2 or 3 years ago proved unsuccessful and never was revived.

There is, however, some day-to-day contact between the two divisions. Thus, there is a direct line connecting them through commercial telephone communications. WBAL announces on the air that it is "the News American Station" or is "affiliated with the News American," and that it has a direct line "to the News Division and NBC."⁹ WBAL advertises in the News American and News American advertises over WBAL, but these transactions are at arm's length — at rates fixed by each medium for all advertisers.¹⁰ Furthermore, the two divisions "compete actively for the advertising dollar of the community."

Although there is no interchange of employees between the divisions, each contracts from time to time for services

⁸ Although News American may purchase newsprint from any source, it has apparently obtained it only from Hearst's newsprint division because of price considerations. Similar economy considerations presumably account for the television and radio managers' engineering service purchases from Hearst's engineering office.

⁹ WBAL Television Manager Gunts testified that it was "not unusual" for television stations, owned or affiliated with newspapers, to announce and identify their affiliations, pointing out that another Baltimore television station, connected with a Baltimore newspaper (presumably the "Sunpapers"), makes similar announcements.

¹⁰ No cash passes between the divisions (the transaction is a "trade deal"), but this is not unique among advertising media. WBAL and News American have similar arrangements with other non-Hearst advertising media in Baltimore.

of certain personalities employed by the other. Thus, WBAL has engaged News American reporters and writers to broadcast or serve on discussion panels and News American has engaged WBAL personnel (e.g., Melva Zaal known as "Mollie Martin") to write a column for News American. However, the individual involved enjoys the status of "independent contractor," unrelated to his employment by his own division. Thus, for example, WBAL pays News American Sports Editor Steadman a price for each show he performs, does not clear its agreement with Steadman with Publisher Collins (nor Hearst), and each of the contracting parties (WBAL and Steadman) is free to terminate the arrangement at any time without reference to Collins or Hearst. WBAL has hired personnel employed by other newspapers and news services on a similar basis.¹¹

As to fringe benefits, Hearst makes available to its divisions certain insurance, pension, and salary continuation plans or programs. Utilization of these, however, is left to the judgment and discretion of each division head, each division paying for operating expenses. One plan (the Broadcast Pension Plan) is available only to radio and television employees represented by labor unions. A major medical and hospitalization plan, in use at WBAL, has no relationship to Hearst. According to WBAL Manager Gunts, WBAL had rejected an alternate Hearst plan "which [it] didn't feel was quite rich enough for what we wanted in our division." Some of the plans in effect at News American were negotiated between it and labor organizations representing its employees.

¹¹ The above-described contractual arrangements between WBAL and Steadman (and other News American personalities) exist despite a provision in Steadman's "personal service" contract with Publisher Collins (signed by Collins on behalf of "The Hearst Corporation (Baltimore News American Division)") that Hearst "shall have the right to transfer" Steadman to any of its divisions. Hearst President Berlin testified that this transfer or assignment clause "has never been used, never been put in force." Publisher Collins' contract with Hearst contains the same provision, but in moving from one Hearst division to another he was never "transferred" under this clause, each of his assignments having been negotiated as if Collins were an applicant.

Each division maintains its own separate financial system, pays and collects its own bills, and has separate bank accounts from which it pays salaries and wages. It also prepares its own financial statements and budgets, but these are submitted to Hearst in New York, primarily for informational purposes.¹² The division heads may incur operational expenses without limitation, but capital expenditures in excess of \$10,000 require Hearst approval.

Collective agreements between the divisions and labor organizations are administered by the division heads. Each division negotiates its own labor agreements independently of the other and of Hearst. Gunts and Burk negotiated the last (1965) contract with AFTRA for WBAL,¹³ and Collins and Street (his subordinate) negotiated for News American with other unions.¹⁴ While the last contract between AFTRA and WBAL (September 1965 — September 1968) provided that it "shall not become binding and effective . . . until it has been countersigned" by an "appropriate executive of the Hearst Corporation" (as well as by AFTRA's "National Executive Secretary"), no such provision appeared in News American's contracts with any labor organization.¹⁵

¹² WBAL and News American officials (Gunts, Street, and Collins) testified that in all of their years of employment, their budget submissions were never questioned by Hearst. Hearst President Berlin likewise indicated that the division head had wide latitude on budget matters, but he also commented that "If he goes overboard he will hear from us. . . ."

¹³ Gunts, in charge of television operations, and Burk, of radio operations, signed the AFTRA contract jointly on behalf of "WBAL Division, The Hearst Corporation."

¹⁴ News American has contractual relations with 11 labor organizations with whom it has 14 signed contracts; none of its employees are represented by AFTRA. The negotiations with 6 of the 11 unions were conducted jointly with a non-Hearst newspaper, the Baltimore Sun ("Sunpapers").

¹⁵ The earlier WBAL-AFTRA contract (September 1963-September 1965) required only approval by the Union's national executive secretary, none by Hearst. It will be recalled that when the 1965 contract was executed WBAL's operations were still supervised by Hearst's Radio and Television Division, headed by Provost, which may account for addition of a line in the 1965 contract pro-

Both WBAL and News American retain the same local (Baltimore) attorneys to handle legal matters, including labor relations problems. However, neither seeks nor obtains direction or guidance thereon from Hearst's New York legal department or labor relations staff.

WBAL's applications for renewal of broadcast station license, filed with the Federal Communications Commission in June 1966 (the most current applications), were made in the name of Hearst as owner, but signed by the local manager as "Vice President for WBAL"; the person to be communicated with was listed as D. C. Provost in New York.¹⁶ Among other things, the applications listed the radio and television stations "owned and operated" by Hearst in other localities, described the type of coverage on the air (including its "featuring the best-known best-qualified reporters, commentators") and, insofar as News American is concerned, stated that it had "direct wires" to it as well as to the National Broadcasting Company.¹⁷

C. Analysis and Conclusions

1.

It is undisputed that in furtherance of its dispute with WBAL, the Union (AFTRA) picketed News American, whose employees were members of other unions. As a

viding for execution by "Radio-TV Division — the Hearst Corporation." In the recent 1968 negotiations prior to the strike, the Union's draft proposals retained the 1965 contract language concerning need for Hearst approval, but this matter was not discussed in the negotiations. WBAL Manager Gunts testified that he now has final authority to conclude and sign a collective agreement "without reference to New York."

¹⁶ As previously noted, Provost was head of Hearst's Radio and Television Division and had overall supervision of WBAL's operations until his retirement (and dissolution of the Hearst division) in November 1966.

¹⁷ The application also stressed the station's other contacts for expeditious handling and processing of news from various sources, including "contact maintained with Baltimore News-American daily newspaper, so that reporters can be dispatched to the scene of fast-breaking local news events."

result, employees refused to cross the picket line and the newspaper was forced to curtail publication, distribution, and circulation. There is no question that by its picketing, the Union induced and encouraged employees of News American to strike and withhold their services from their employer, and, further, that the Union restrained and coerced News American with an object of forcing it to cease doing business with WBAL and News American customers and suppliers. I so find. The sole question is whether News American is a "person" entitled to the protection of secondary boycott provisions of Section 8(b)(4). As noted (*supra*, III, A), the Union contends that it is not — on the ground that News American and WBAL each constitutes "part" of one person (The Hearst Corporation) or that the two divisions together compose a single "person." Accordingly, the Union contends the picketing was protected "primary" activity. On the other hand, General Counsel and Charging Party contend that WBAL and News American are separate and autonomous operations, both as between each other and as between each and Hearst, with no control over their day-to-day operations by Hearst; that the two divisions constitute separate and distinct employing entities; and, therefore, that News American is a neutral "person" entitled to the protection of the secondary boycott provisions.

Section 8(b)(4) provides, in relevant part, that it shall be an unfair labor practice for a labor organization:

(i) to engage in, or to induce or encourage any individual employed by *any person* engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . transport, or otherwise handle or work on any goods . . . or to perform any services; or (ii) to threaten, coerce, or restrain *any person* engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

(B) forcing or requiring *any person* to cease . . . handling, transporting, or otherwise dealing in the

products of any other producer . . . or to cease doing business with *any other person* . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing. . . . [Emphasis supplied.]

Section 2(1) of the Act provides:

The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

As the Board and courts have repeatedly pointed out, Section 8(b)(4) was aimed at "shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B. v. Denver Building and Construction Trades Council, et al.* [Gould & Preisner], 341 U.S. 675, 692. "It [was] aimed to restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and, as Congress evidently judged, dangerous practice of unions to widen that conflict." *Local 1976, United Brotherhood of Carpenters and Joiners of America, AFL etc. [Sand Door & Plywood Co.] v. N.L.R.B.*, 357 U.S. 93, 100. See also *Local 761, International Union of Electrical, Radio and Machine Workers [General Electric Co.] v. N.L.R.B.*, 366 U.S. 667, 672. In implementing Section 8(b)(4), the Board and courts have given broad meaning to the term "person" falling within the protective scope of the section. As stated in *Department & Specialty Store Employees Union, Local 1265, R.C.I.A., AFL-CIO [Oakland G. R. Kinney Co.] v. Brown*, 284 F. 2d 619, 626 (C.A. 9), the statute is "to be broadly and liberally construed to accomplish its intended purpose," always bearing in mind "the mischief sought to be remedied."

Although determination of which entity is the "primary" employer who may be picketed is not always easy to make (Cf. *Local 761, I.U.E. v. N.L.R.B., supra*, 366 U.S. at 673), the general rule is that the primary employer is the one with whom the union has its basic dispute; i.e., the one

"with whom the union is principally at odds." *Local 1976, Carpenters v. N.L.R.B.*, *supra*, 357 U.S. at 99. See also *N.L.R.B. v. International Brotherhood of Teamsters, Local 294 [Island Dock Lumber, Inc.]* 342 F. 2d 18, 22 (C.A. 2). Only the primary employer is in a position to grant the union's demands and to resolve the underlying dispute. To assist them in determining the primary employer who may be picketed, and the circumstances when he may be picketed in order not to enmesh a secondary employer in the dispute, the Board and courts have often found it necessary to set up guidelines;¹⁸ and in doing this, they will look behind artificial "legal" persons and ignore corporate structures to determine the true employer. As the Supreme Court has said, whether or not picketing is protected by Section 8(b)(4) is not "dependent on fortuitous arrangements that have no significance so far as the evils of the secondary boycott are concerned." *N.L.R.B. v. Denver Building Trades Council*, *supra*, 341 U.S. at 693.¹⁹

Thus, under the so-called "ally" doctrine two corporations, commonly controlled or engaged in closely integrated operations, may be regarded as a single employing enterprise. *Miami Newspaper Printing Pressmen's Local No. 46 [Knight Newspapers, Inc.] v. N.L.R.B.*, 322 F. 2d

¹⁸ See *Sailors' Union of Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547, 549 ("common situs" picketing); *Local 761, I.U.E. v. N.L.R.B.*, *supra*, 366 U.S. 672 ("reserved gate" picketing); *International Hod Carriers, Building and Common Laborers' Union of America, Local No. 41, AFL-CIO (Calumet Contractors Association)*, 133 NLRB 512 ("area standard" picketing); *N.L.R.B. v. Business Machine and Office Appliance Mechanics Conference Board, Local 459, International Union of Electrical Radio & Machine Workers, CIO [Royal Typewriter Co.]*, 228 F. 2d 553, 555-559 (C.A. 2) (picketing directed at "struck work").

¹⁹ Cf. *N.L.R.B. v. Hearst Publications, Inc.*, 322 U.S. 111, 129: [T]he broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as "employee," "employer," and "labor dispute," leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications.

405, 409 (C.A.D.C.), enfg. 138 NLRB 1346.²⁰ Although separate "legal entities," both are "allies" in and parties to, the union's dispute with one of them; and both are vulnerable to union economic pressures and picketing. However, common ownership alone is not sufficient, nor mere existence of a potential for common control. *Drivers, Chauffeurs and Helpers Local No. 639, etc. (Poole's Warehousing, Inc.)*, 158 NLRB 1281, 1286. Of paramount significance are the nature of the day-to-day operations and of labor policies in the entities in question.

2.

The instant case involves one corporation (Hearst) and two unincorporated divisions thereof, with one of which (WBAL) the Union had a dispute. Apparently even under the Union's theory of the case, News American (which the Union picketed in furtherance of its dispute with WBAL) would qualify as a neutral, secondary employer under Section 8(b)(4) if the newspaper were incorporated as a separate legal entity. Cf. *Miami Newspaper Printing Pressmen's Local No. 46 v. N.L.R.B.*, *supra*, 322 F. 2d 405 (C.A.D.C.). The Union frankly stated in the complaint hearing that it "make[s] no serious argument that the day-to-day operations of the News American and WBAL are so intertwined as to represent one." That the two divisions, vis-a-vis each other, constitute separate employing entities, independent of each other, is established by the fact that they are engaged in two distinct and separate aspects of communications media; that they establish their own advertising rates and service charges; that they are in daily competition with each other for the advertising dollar; that they handle all matters of employment (hiring, firing, employee benefits, etc.) and effectuate labor relations policies and administration (e.g., collective agreements and matters arising thereunder) completely independent of each other; that they maintain separate financial systems and separate bank accounts from which they pay all

²⁰ See also *J. G. Roy and Sons Company v. N.L.R.B.*, 251 F. 2d 771 (C.A. 1); *Bachman Machine Company v. N.L.R.B.*, 266 F. 2d 599, 603-605 (C.A. 8).

salaries and wages; and that they pay and collect their own bills. There is, of course, some degree of cooperative contact between the two divisions, as where a News American personality is allowed to appear on WBAL, but such individual is engaged as an independent contractor (in the same way as WBAL engages personalities from other newspapers) and the individual appears independently of the dictates of News American.

The record further establishes, and I find, that each division constitutes a separate employing entity vis-a-vis Hearst. As shown, Hearst permits each division head to operate the division as if it were "his own." News American Publisher Collins exercises complete authority over the newspaper operations and General Managers Gunts and Burk over the television and radio operations. Although Hearst makes available certain news services (King Features, Hearst Headline Service, Hearst Newsprint), professional services (engineering), and benefit plans (pensions, insurance, etc.) to both divisions (as well as to other Hearst-owned divisions), use of these Hearst services is optional with each division head. Similarly, the fact that both News American and WBAL use the same local (Baltimore) legal counsel is not determinative, since each division head establishes his own labor policy; and, significantly, neither avails himself of Hearst's New York advisory labor relations staff. Contrary to the Union, I see nothing particularly significant in the fact that WBAL, in license renewal applications with the Federal Communications Commission and in announcements on the air, holds itself out (to the public) as a Hearst instrumentality.²¹ As

²¹ As the Union points out, in its June 1966 application with FCC, WBAL stated that it was "owned and operated" by Hearst. However, as previously noted, this application was filed prior to dissolution of Hearst's New York Radio and Television Division and retirement in November 1966 of its head (Provost) who until then supervised WBAL operations. As also noted, Provost had countersigned and approved WBAL's 1965 collective agreement prior to his retirement. The record establishes that no such approval from any Hearst executive is presently required.

we have seen, common ownership alone does not establish a single employing entity.

To be sure, several other factors relied on by the Union raise more substantial questions. Thus, as the Union points out, both WBAL and News American are required to make periodic financial reports to Hearst, including profit-and-loss statements. Capital expenditures exceeding \$10,000 must receive Hearst approval. Personal contracts with certain personalities reserve to Hearst the right to transfer the individual to other Hearst divisions. Finally, Hearst designates the division head who is answerable to Hearst. However, the record shows that the financial reports are basically routine and informational in nature, that Hearst has not actually vetoed capital expenditures, that it has not exercised its right to transfer or move individuals from division to division, and that the division heads exercise complete and final authority over day-to-day operations. Hence, insofar as it appears, the Union established only the existence of "potential" control. However, the crucial test is not whether power to control exists. "There must be in addition such actual or active common control, as distinguished from merely a potential, as to denote an appreciable integration of operations and management policies." *Drivers, Chauffeurs and Helpers Local No. 639, etc. (Poole's Warehousing, Inc.)*, 158 NLRB 1281, 1286. See also *Miami Newspaper Printing Pressmen's Local No. 46 v. N.L.R.B.*, *supra*, 322 F. 2d at 408-409; *J. C. Roy and Sons Company v. N.L.R.B.*, *supra*, 251 F. 2d at 774-775. It is difficult to believe that a three-man Hearst hierarchy could feasibly and effectively control from New York City the day-to-day operations of some 20 to 30 divisions of a widely diversified nature, situated throughout the country. Practical and sound economic considerations alone would support Hearst President Berlin's statement that each division head is lodged with complete discretion and authority in operating his division. Nor would the result reached herein be altered by the fact that Hearst stands "in an advisory [as distinguished from] an executive capacity." *Miami Newspaper Printing Pressmen Local No. 46, etc. (Knight Newspapers, Inc.)*, 138 NLRB at 1347.

3.

The Union's basic contention is a legal one. It contends that while the integrated operation and common control test may be used to determine if two different corporations or legal entities constitute a single "person" or employing enterprise, this cannot be done where only one corporation or legal entity, such as Hearst, is involved. According to the Union, "Parts of the same entity [divisions of Hearst] cannot be considered as an innocent or genuinely third party" for which 8(b)(4) protection was designed. The Union points out that while the Board has sometimes "made one 'person' out of two separate legal entities," this "is something different than making two persons out of one legal entity." "In short," as the United States District Court for the District of Maryland (*supra*, III, A) put it, "they [the Union] say under the definition of 'persons' you can make many into 'one person' but you cannot make one into many." (69 LRRM at 2519). I am no more persuaded by the Union's argument than was the United States District Court which held that the Union's "tenuous thread of legal oneness" theory was insufficient "to deny the News-American the protections of the Act." 69 LRRM at 2521.

It appears, as the Union suggests, that the Board has not directly passed on the question whether an unincorporated Division, or part of a corporate entity, may constitute a "person" under Section 8(b)(4). The parties cite no case directly in point and my research has uncovered none. However, viewed in the light of the legislative history of the section, the breadth of protection offered by it, the liberal construction given to the term "person" by the Board and courts, and the fact that it is the substance and not form or structure of the employing entity to which the Board and courts look in determining obligations and benefits under the National Labor Relations Act, I see no reason in principle why the term "person" should not be interpreted to comprehend in circumstances such as here, a division of a corporation not itself qualifying as a "legal entity" under technical, common law concepts.

To begin with, contrary to the Union's contention, the categories listed in Section 2(1) of the Act as falling within the term "person," are not all inclusive. The section merely states that the term "includes" "individuals" and certain entities such as "partnerships, associations, corporations." Nothing in the literal reading of Section 2(1) precludes divisions or parts of "corporations" from qualifying as "persons" if they constitute separate and autonomous employing entities. In other words, as the Supreme Court in effect held, Section 2(1) is an open end definition. Thus, in *Local Union No. 25, International Brotherhood of Teamsters, etc. v. New York, New Haven & Hartford Railroad Co.*, 350 U.S. 155, decided before the 1959 amendments to the Act, the Supreme Court held that a railroad was protected against secondary pressures even though specifically excluded from the reach of the National Labor Relations Act by virtue of the definition of "employer" (Section 2(2) of the Act). The Court stated that "since railroads are not excluded from the Act's definition of 'person,' they are entitled to Board protection from the kind of unfair labor practice proscribed by Section 8(b)(4)(A)." 350 U.S. at 231. Applying this Supreme Court holding, the Board, in *Local Union No. 313, I.B.E.W. (Peter D. Furness Electric Co.)*, 117 NLRB 437, enfd. 254 F. 2d 221 (C.A. 3), extended the protection of Section 8(b)(4) to "political subdivisions" such as a county, even though such entities were likewise not enumerated in Section 2(1). The legislative history of the 1959 amendments to the Act make it crystal clear that Congress meant to expand the concept of "employer" as used in Section 8(b)(4) to its fullest scope, or as one leading exponent of the legislation put it, "to its full dictionary meaning."²² In my view, such a comprehensive definition of "employer" readily encompasses a separate, autonomous, and independently operated division of a corporation, which is materially free from interference and control of its parent organization. In the instant case, WBAL and News American each constitutes such division. WBAL — not News American or

²² See, e.g., II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 1857 (GPO 1959).

Hearst — is the employer with whom the striking AFTRA employees had the dispute. WBAL establishes their wages and working conditions and it alone is in a position to grant the Union's demands and to resolve the underlying dispute at the bargaining table. As in the typical secondary boycott, the picketed employer (News American) could help the primary employer (WBAL) only by ceasing to do business with it.

Moreover, as the Supreme Court has stressed, a statute like the Taft-Hartley Act is not susceptible to "mechanical" application. *Local 1976, Carpenters v. N.L.R.B.*, *supra*, 357 U.S. at 100. See also *Local 761, I.U.E. v. N.L.R.B.*, *supra*, 366 U.S. at 672; *National Woodwork Manufacturers Association, et al. v. N.L.R.B.*, 386 U.S. 612, 619. "[T]his section 8(b)(4)(A) and (8) cannot be read or applied literally; it must be construed . . . applying the intent of the statute to the facts in the case." *Local No. 24, International Brotherhood of Teamsters, etc. [A.C.E. Transportation] v. N.L.R.B.*, 266 F. 2d 675, 680 (C.A.D.C.).²³ To accept the Union's interpretation that a corporation can have no separate and independent employing entities within it would, as the Union frankly asserted at the hearing, legally sanction carrying its dispute with WBAL (and picketing) not only to News American (6 miles away in the same city), but to everyone of Hearst's numerous divisions (newspapers, radio and television stations, motion pictures, real estate facilities, etc.) in every part of the country. Such enlargement of the area of industrial conflict would create a situation whereby distant, diverse, and independently operated enterprises of a conglomerate could be embroiled in labor disputes which they could not help resolve. It is no answer to say, as the Union suggests, that Hearst only had to incorporate its divisions to escape disruptions. Such argu-

²³ See also *N.L.R.B. v. Fruit and Vegetable Packers & Warehousemen, Local 760 [Tree Fruits Labor Relations Committee, Inc.]*, 377 U.S. 58, 71-72:

"[I]t is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of the makers."

ment exalts form over substance and, if it were to prevail, would defeat the overall statutory objective to insulate employing entities from controversies not their own. As in other areas of industrial relations, the Board must look beyond "organizational form" and evaluate the nature and status of the enterprise in the light of industrial reality. Cf. *N.L.R.B. v. Hearst Publications, Inc.*, 322 U.S. 111, 129.²⁴

Although, as stated, the Board has not directly ruled on the question whether a division or unit of a corporate entity may qualify as a "person" under Section 8(b)(4), it did consider the legality of picketing one unit of a corporation where the dispute existed between the union and another unit, but the Board decided that case on grounds other than here advanced. In *Alexander Warehouse & Sales Company*,²⁵ the union, in furtherance of a labor dispute with a warehouse owned by a corporation, picketed two other warehouses maintained by that corporation in two other cities. The Board dismissed the 8(b)(4) charges not on the ground that the corporation was a single legal entity operating three warehouses which were not separate legal entities, but on the ground that the two allegedly neutral warehouses were sufficiently "allied" to the third (by virtue of common general supervision, central purchases, pooled shipments, and interchange of employees) to constitute all an integrated enterprise. 128 NLRB at 919. If, as the Union here contends, a single corporation cannot have more than one "person" within itself, or among its divisions, that simple pronouncement would have been a sufficient basis for dismissal without the need for examining the various factors of control, integration, day-to-day operations, etc.

The instant case is, as the Union concedes, strikingly similar to a case recently decided by the United States District

²⁴ See also, e.g., *N.L.R.B. v. Condenser Corporation of America*, 128 F. 2d 67, 71-72 (C.A. 3); *N.L.R.B. v. Gibraltar Industries Inc., et al.*, 307 F. 2d 428 (C.A. 4).

²⁵ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Local 179, etc. (Alexander Warehouse & Sales Company)*, 128 NLRB 916.

Court for the Northern District of California (*Kennedy v. San Francisco-Oakland Newspaper Guild*, 69 LRRM 2301) which, as here, involved two divisions of Hearst. There, the Court enjoined picketing at one Hearst division (The San Francisco Examiner division) in furtherance of a dispute with another Hearst division (Los Angeles Herald division), holding that each constituted a "person" under the Act, since each operated as separate, autonomous, entities, free of control by Hearst in its day-to-day operations and in its labor relations policies.

For all of the foregoing reasons and on the entire record, I find and conclude that News American was a "person" under Section 8(b)(4) of the Act, entitled to protection against secondary pressures. I find that AFTRA's picketing of the News American premises in furtherance of its dispute with WBAL was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

Conclusions of Law

1. The Union (AFTRA) is a labor organization within the meaning of Section 2(5) of the Act.
2. WBAL and News American are employees engaged in commerce or industries affecting commerce within the meaning of Sections 2(2), (6), (7) and 8(b)(4) of the Act.
3. WBAL and News American are "persons" within the meaning of Sections 2(1) and 8(b)(4) of the Act.
4. By picketing the premises of News American, with which it had no labor dispute, the Union has engaged in, and has induced and encouraged individuals employed by News American to engage in a strike or refusal to perform services, and has threatened, coerced, and restrained News American, with an object in each case of forcing or requiring persons engaged in commerce or in an industry affecting commerce, to cease doing business with News American, and thereby has violated Section 8(b)(4)(i) and (ii)(B) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend the customary cease-and-desist order and the usual affirmative relief ordered in cases of this nature, including posting of notices.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following:

RECOMMENDED ORDER

American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Baltimore News American Division, The Hearst Corporation, or any other person engaged in commerce or in an industry affecting commerce (other than WBAL Division, The Hearst Corporation), to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require persons engaged in commerce or in an industry affecting commerce, to cease doing business with Baltimore News American Division, The Hearst Corporation.

(b) Threatening, coercing, or restraining Baltimore News American Division, The Hearst Corporation, or any other person engaged in commerce or in an industry affecting commerce (other than WBAL Division, The Hearst Corporation), where an object thereof is to force or require persons engaged in Commerce or in an industry affecting commerce, to cease doing business with Baltimore News American Division, The Hearst Corporation.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."²⁶ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by its authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish said Regional Director signed copies of the aforesaid notice for posting by WBAL Division, The Hearst Corporation, and by Baltimore News American Division, The Hearst Corporation, they being willing, at places where they customarily post notices to their employees.²⁷

Dated at Washington, D.C.

APPENDIX

NOTICE TO ALL MEMBERS OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS WASHINGTON-BALTIMORE LOCAL, AFL-CIO.

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order

²⁶ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

²⁷ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 5, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by Baltimore News American Division, The Hearst Corporation, or by any other person engaged in commerce (other than WBAL Division, The Hearst Corporation), to engage in a strike or refusal to perform services, where an object thereof is to force or require Baltimore News American Division, The Hearst Corporation, to cease doing business with WBAL Division, The Hearst Corporation, or any other person.

WE WILL NOT threaten, coerce, or restrain Baltimore News American Division, The Hearst Corporation, or any other person engaged in commerce or an industry affecting commerce (other than WBAL Division, The Hearst Corporation), where an object thereof is to force or require Baltimore News American Division, The Hearst Corporation, to cease doing business with WBAL Division, The Hearst Corporation or any other person.

AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS WASHINGTON-
BALTIMORE LOCAL, AFL-CIO.

(Labor Organization)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Federal Building, Room 1019, Charles Center, Baltimore, Maryland 21202, Telephone 301-962-2822.

185 NLRB No. 26

D-4290
Baltimore, Md.

*United States of America
Before the National Labor Relations Board*

Case 5-CC-446

*American Federation of Television and Radio Artists
Washington-Baltimore Local AFL-CIO
and
Baltimore News American Division,
The Hearst Corporation*

DECISION AND ORDER

On January 27, 1969, Trial Examiner Samuel M. Singer issued his Decision in the above case, finding that the Respondent, American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO, had engaged in certain unfair labor practices as alleged in the complaint, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, the General Counsel filed a Memorandum in support of the Trial Examiner's Decision, and the Charging Party filed its brief to the Trial Examiner as support for his Decision.

The Respondent in the instant case, and the respondents in *San Francisco Examiner Division of the Hearst Corporation*, 185 NLRB No. 25, issued this day filed a joint motion to consolidate these two cases for purposes of decision. The Charging Parties and the General Counsel in both cases have filed oppositions thereto in their answers and responses. The parties and some of the issues are different and in our opinion no useful purpose would be served by consolidating the cases. The motion is therefore denied.

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and

finds that no prejudicial error was committed. They are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner as modified below, and hereby orders that the Respondent, American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order as herein modified:

1. Substitute the following for footnote 26 of the Trial Examiner's Decision:

In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

2. Substitute the attached appendix for the appendix to the Trial Examiner's Decision.

Dated, Washington, D.C. Aug. 27, 1970.

Edward B. Miller,	Chairman
Frank W. McCulloch,	Member
Howard Jenkins, Jr.,	Member
NATIONAL LABOR RELATIONS BOARD	

(Seal)

¹ See also *San Francisco Examiner Division of The Hearst Corporation*, 185 NLRB No. 25.

Member Brown, dissenting:

Contrary to the majority, I would reverse the Trial Examiner and dismiss the complaint in its entirety. In my opinion, Section 8(b)(4)(B) does not proscribe picketing of a corporate enterprise in furtherance of a basic economic dispute with a separate operating division of that corporation. Therefore I would hold that the picketing of Baltimore News American, a separate operating division of The Hearst Corporation, being in support of contract demands in negotiations with WBAL, also an operating division of Hearst, constituted legitimate primary activity. My position in this regard is based essentially upon the reasoning and conclusions of Trial Examiner Marx in *Los Angeles Newspaper Guild, Local 69, et al. (San Francisco Examiner, Division of The Hearst Corporation)*, 185 NLRB No. 25, issued simultaneously herewith, and my separate opinion in that case. However, I wish to emphasize that my difference with the majority lies squarely in my disagreement with their conclusion that the Hearst corporate enterprise is to be regarded as a neutral, unoffending employer with respect to labor disputes involving its various operating segments.

It is a fact that separate operating divisions of a single corporate enterprise do not qualify as a separate "person" within the meaning of Section 8(b)(4)(B) under a literal reading of the statutory definition of that term set forth in Section 2(1) of the Act.² Accordingly, unless that definition is broadened by interpretation, the entire Hearst corporation must be regarded as a single "person" for purposes of the secondary boycott provisions, and all pressures directed at any operating division thereof would clearly constitute legitimate primary activity. Although, I might concede, for purposes of argument, that Section 2(1) might possibly be construed to regard the various segments of Hearst as separate persons, such an interpretation is hard-

² Section 2(1) provides:

The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

ly in keeping with the balance to be maintained between the conflicting policies underlying Section 8(b)(4)(B).³

Thus, through Section 13 of the Act, Congress, in unmistakable terms, preserved a labor organization's right to strike, "except as specifically provided . . . [in the Act]."⁴ It would seem contrary to this mandate to extend by interpretation any statutory provision which impairs the right to strike, and, consistent with Section 13, the Supreme Court has repeatedly cautioned against interpretations of Section 8(b)(4)(B) which restrict direct economic pressures in primary labor disputes.⁵

In this case we are confronted by nothing more than a labor organization's attempt to apply strike pressures upon a single corporate enterprise to secure economic concessions in its dispute with a segment of that enterprise. Quite obviously, Respondent, in order to reach the Hearst enterprise, could only do so by imposing direct pressures on its other operating divisions such as the Baltimore News American. That Hearst is a direct party to labor disputes involving its separate divisions is not only inherent in the structure of the enterprise but is a matter of cold economic fact. As was so cogently stated by Trial Examiner Marx in the *San Francisco Examiner* case, *supra*:

The "operating profits" made by the Hearst divisions are fuel for the total corporate body and, together with

³ It is the duty of the Board to balance "the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B. v. Denver Building and Construction Trades Council, et al.* (Gould & Preisner), 341 U.S. 675, 692.

⁴ Section 13 of the Act provides as follows:

Nothing in this Act except as specifically provided herein shall be construed so as to either interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

⁵ See, e.g., *Local 1976, Carpenters v. N.L.R.B.* (Sand Door & Plywood Co.), 357 U.S. 93, 99; *Local 761, International Union of Electrical, Radio and Machine Workers (General Electric Co.) v. N.L.R.B.*, 366 U.S. 667, 672; *National Woodworkers Mfgs. Assn. v. N.L.R.B.*, 386 U.S. 612, 625-627.

other economic resources of the Corporation, are available at its will to sustain any division in a contest of legitimate economic pressures involved in a labor dispute between a union and the management of the division or, in other words, with Hearst. The right and power of the Corporation to muster its economic resources to such an end, irrespective of their divisional source, underscores the need for recognition of a correlative right in the union to engage in "otherwise" lawful picketing of premises of the Corporation other than the dispute situs.

Section 8(b)(4)(B) in my opinion cannot be read as conferring neutral status upon such an overall corporate enterprise, or to insulate Hearst from the lawful picketing in this case. That section was designed solely to condemn direct pressures against "unoffending employers"⁶ or "some third party who has no concern in . . . [the dispute]."⁷ "Judicial decisions interpreting the broad language of Section 8(b)(4) . . . of the Act uniformly limited its application to such 'secondary' situations." *National Woodworkers Mfrs. Assn. v. N.L.R.B.*, 386 U.S. 612, 625-627. To regard Hearst as a neutral party to the dispute involving WBAL is to distort the balance to be maintained between the competing interests underlying Section 8(b)(4)(B) by shielding an offending employer from his own dispute. I cannot subscribe to such a result and accordingly would find that Respondent's picketing of Hearst constituted traditional primary activity and did not violate Section 8(b)(4)(B).

Dated, Washington, D.C. Aug. 27, 1970.

GERALD A. BROWN, Member
NATIONAL LABOR RELATIONS BOARD

⁶ See footnote 2, *supra*.

⁷ *International Brotherhood of Electrical Workers, Local 501 v. N.L.R.B.*, 181 F. 2d 34, 37 (C.A. 2). Senator Taft, who sponsored the former Section 8(b)(4)(A), defined its purpose as follows:

This provision makes it unlawful to resort to a secondary boycott to injure the Business of a third person who is wholly unconcerned in the disagreement between an employer and his employees. 93 Cong. Rec. 4323, II Leg. Hist. LMRA 1106.

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NOTICE

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

TO ALL MEMBERS OF AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS WASHINGTON-BALTIMORE LOCAL, AFL-CIO

WE WILL NOT induce or encourage any individual employed by Baltimore News American Division, The Hearst Corporation, or any other person engaged in commerce or in an industry affecting commerce (other than WBAL Division, The Hearst Corporation), to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require persons engaged in commerce or in an industry affecting commerce, to cease doing business with Baltimore News American Division, The Hearst Corporation.

WE WILL NOT threaten, coerce, or restrain Baltimore News American Division, The Hearst Corporation, or any other person engaged in commerce or in an industry affecting commerce (other than WBAL Division, The Hearst Corporation), where an object thereof is to force or require persons engaged in commerce or in an industry affecting commerce, to cease doing business with Baltimore News American Division, The Hearst Corporation.

AMERICAN FEDERATION OF TELEVISION AND RADIO
ARTISTS WASHINGTON-BALTIMORE LOCAL, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, Federal Building, Room 1019, Charles Center, Baltimore, Maryland 21202, Telephone 301-962-2822.

App. 175

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND SET ASIDE AND CROSS-
APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit
BRIEF OF PETITIONER

FILED JAN 7 1971

BERNARD W. RUBENSTEIN,

Nathan J. Paulson
CLERK

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TABLE OF CONTENTS

	PAGE
STATEMENT OF ISSUES	1
REFERENCE TO RULINGS	2
STATEMENT OF THE CASE	2
 ARGUMENT:	
I. The plain meaning of the Statute, viewed together with its legislative history and the Congressional purpose behind its enactment, demonstrate clearly that the News American is not a "person" within the meaning of Sections 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended	4
A. Under the specific language of the National Labor Relations Act, the News American is not a "person" within the meaning of Section 8(b)(4)	4
B. The legislative history of the 1959 amendments to the National Labor Relations Act supports the conclusion that the News American is not a "person" within the meaning of Section 8(b)(4)	7
C. The Board decision in this case is an unwarranted extension of existing Board and Court cases	9
II. The economic facts of the relationship between Hearst divisions and The Hearst Corporation clearly show that The Hearst Corporation is one "person" under Section 8(b)(4) of the National Labor Relations Act	13
CONCLUSION	19

TABLE OF CITATIONS

Cases

American Furniture Company, Inc., 116 NLRB 1290 (1956)	10
Drivers and Helpers Local No. 639 (Poole's Warehousing, Inc.), 158 NLRB 1281 (1966)	11, 12

	PAGE
*International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Local 179, etc. (Alexander Warehouse and Sales Company), 128 NLRB 916 (1960)	10, 12, 13
Local Union No. 25, International Brotherhood of Teamsters, etc. v. New York, New Haven and Hartford Railroad Company, 350 U.S. 155 (1956)	6, 9
Local Union No. 313, International Brotherhood of Electrical Workers (Peter D. Furness Electric Company), 117 NLRB 437, enfd., N.L.R.B. v. Local Union No. 313, International Brotherhood of Electrical Workers, 254 F. 2d 221 (3rd Cir., 1958)	6, 9
*Los Angeles Newspaper Guild, Local No. 69, et al. (San Francisco Examiner Division of The Hearst Corporation), 185 NLRB No. 25 (1970)	2, 13
*Miami Newspaper Printing Pressman's Local No. 46 (Knight Newspapers, Inc.), 138 NLRB 1346, enfd., Miami Newspaper Printing Pressman's Local No. 46 v. N.L.R.B., 116 U.S. App. D.C. 192, 322 F. 2d 405 (C.A. D.C., 1963)	11, 13, 14
Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 386, etc. (California Association of Employers), 120 NLRB 1161 (1958)	12
United Brotherhood of Carpenters and Joiners of America, AFL-CIO, etc. (J. G. Roy and Sons Company), 118 NLRB 286, set aside, J. G. Roy and Sons Company v. N.L.R.B., 251 F. 2d 771 (1st Cir., 1958)	10
*Warehouse and Distribution Workers Union, Local No. 688 (Bachman Machine Company), 121 NLRB 1229, set aside, Bachman Machine Company v. N.L.R.B., 266 F. 2d 599 (8th Cir., 1959), suppl'd, Warehouse and Distribution Workers	

* Cases or authorities chiefly relied upon are marked by asterisks.

	PAGE
Union, Local No. 688 (Bachman Machine Company), 124 NLRB 743 (1959)	10, 11

Statutes

Labor-Management Relations Act, 1947, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.:	
Sections 8(b)(4)(i) and (ii) (B)	4
Section 2(1)	5

Text

II Legislative History, Labor-Management Reporting and Disclosure Act, 1957	8
--	---



IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND SET ASIDE AND CROSS-
APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF OF PETITIONER

STATEMENT OF ISSUES

1. Whether Section 8(b)(4)(B) of the National Labor Relations Act proscribes picketing of an operating division of a corporate enterprise in furtherance of a basic economic dispute with a separate operating division of that corporate enterprise.

2. Whether separate operating divisions of a single corporate enterprise constitute a single "person" or separate persons under the National Labor Relations Act.

The Pending Case has not been before this Court previously.

REFERENCE TO RULINGS

The Decision and Order presented for review by this Court is *American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO and Baltimore News American Division, The Hearst Corporation*, 185 NLRB No. 26, (Case 5-CC-446) issued August 27, 1970 (App. 170-175).¹

STATEMENT OF THE CASE

This matter comes before the Court on a petition filed by American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO (hereinafter called "AFTRA" or "Union") to set aside a Decision and Order of the National Labor Relations Board in 5-CC-446, 185 NLRB No. 26, dated August 27, 1970, and a cross-petition filed by the National Labor Relations Board to enforce said Decision and Order (App. 170-175).

Upon a charge filed on September 23, 1968 by Baltimore News American Division, The Hearst Corporation (hereinafter called "News American"), the General Counsel of the National Labor Relations Board by the Regional Director, Region 5, issued a Complaint on October 7, 1968, alleging that AFTRA had engaged in certain secondary boycott activities prohibited by Sections 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, by picketing the premises of the News American in furtherance of the primary labor dispute with WBAL Divi-

¹ The instant case is a companion case with *Los Angeles Newspaper Guild, Local 69, et al., and San Francisco Examiner Division of The Hearst Corporation*, 185 NLRB No. 25. The Decision and Order in that case provides the basis of the decision in this case (App. 171).

sion, The Hearst Corporation (hereinafter called "WBAL"). A hearing was held on this Complaint in Baltimore, Maryland on November 6, 1968 before Samuel M. Singer, Trial Examiner (App. 86-128).² On January 27, 1969, Trial Examiner Singer issued his Decision finding that AFTRA had engaged in the unfair labor practices as alleged in the Complaint and recommending that it cease and desist therefrom and take certain affirmative action (App. 147-169). After AFTRA filed timely exceptions to the Trial Examiner's Decision, the National Labor Relations Board issued a Decision and Order adopting the findings, conclusions and recommendations of the Trial Examiner (App. 170-175). It is this Decision and Order of the National Labor Relations Board, dated August 27, 1970, that the Petitioner seeks to set aside herein.

The Hearst Corporation, a Delaware corporation with headquarters in New York City, is comprised of a number of operating divisions including newspapers, radio and television stations.

WBAL is a division of The Hearst Corporation operating a radio and television station in Baltimore, Maryland. The News American is another division of The Hearst Corporation operating a daily newspaper in Baltimore, Maryland.

AFTRA has represented WBAL's staff announcers and on-the-air employees for many years. The collective bargaining agreement having expired on September 1, 1968, AFTRA struck and picketed WBAL on September 21, 1968 after negotiations for a new contract were broken off. On September 23, 1968, AFTRA pickets appeared at the News American premises in Baltimore, Maryland. As a result of

² A hearing was held before the United States District Court for the District of Maryland on October 7, 1968 under Section 10(1) of the Act. The transcript forms a part of the record in this case by stipulation (App. 2-86).

this picketing, some of the employees of the News American represented by unions other than AFTRA refused to cross the picket line. This proceeding arises out of the picketing of the News American premises.

ARGUMENT

I.

THE PLAIN MEANING OF THE STATUTE, VIEWED TOGETHER WITH ITS LEGISLATIVE HISTORY AND THE CONGRESSIONAL PURPOSE BEHIND ITS ENACTMENT, DEMONSTRATE CLEARLY THAT THE NEWS AMERICAN IS NOT A "PERSON" WITHIN THE MEANING OF SECTIONS 8(b)(4)(i) AND (ii)(B) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

A. Under the Specific Language of the National Labor Relations Act, the News American is not a "person" Within the Meaning of Section 8(b)(4).

The National Labor Relations Act, as amended, Sections 8(b)(4)(i) and (ii)(B), (61 stat. 136, 73 stat. 519, 29 U.S.C. 151, et seq.) provides, in relevant part, that it shall be an unfair labor practice for a labor organization:

"(i) to engage in, or to induce or encourage any individual employed by *any person* engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . transport, or otherwise handle or work on any goods . . . or to perform any services; or (ii) to threaten, coerce, or restrain *any person* engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

"(B) forcing or requiring *any person* to cease . . . handling, transporting, or otherwise dealing in the products of any other . . . or to cease doing business with *any other person* . . . Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful any primary strike or primary picketing . . ." (Emphasis supplied.)

As is evident, and as the Board so concluded, a finding that the picketing directed against the News American in support of a primary strike against Hearst's WBAL Division was unlawful would necessarily encompass the holding that the News American is a "person" within the meaning of Sections 8(b)(4)(i) and (ii)(B).

The Board's determination that the News American is a "person" entitled to the protection of the Act conflicts, at the very outset, with the plain language of the statute. The term "person" is defined in Section 2(1) of the Act, and includes, "... one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." (Emphasis supplied.) As Hearst's divisions are unincorporated departments of its business enterprise, it is apparent that the News American Division, or any other divisions of the Hearst Corporation, is not within any of the express inclusions of the statutory definition of "person". Indeed, according to Section 2(1) of the Act, the only "person" for the purposes of Sections 8(b)(4)(i) and (ii)(B) is *The Hearst Corporation itself*, and the separate operating divisions of The Hearst Corporation are merely *parts* of one "person".

Thus, the decision of the Board, on its face, completely ignores and contravenes the congressional definition of the term "person" contained in Section 2(1) of the Act. As part of the process by which the statute is thus expanded beyond its clear meaning, the Trial Examiner, and later the Board, rely upon two principal contentions: (a) that the cases demonstrate that the definition of the word "person" in Section 2(1) of the Act is not all-inclusive, and (b) that the legislative history leads to the same conclusion (App. 163-164). On the contrary, it is submitted that reli-

ance on these theories is misplaced and totally unconvincing.

To begin, neither *Local Union No. 25, I.B.T. v. New York, New Haven & Hartford Railroad Co.*, 350 U.S. 155 (1956), nor *Local Union No. 313, I.B.E.W. (Peter D. Furness Electric Co.)*, 117 NLRB 437, enfd. 254 F. 2d 221 (3rd Cir. 1958), cited by the Trial Examiner (App. 163), support the contention that the definition of the term "person" in Section 2(1) is not all-inclusive. In *Teamsters, Local 25*, the Supreme Court merely held that railroads were "persons" under Section 2(1) and hence entitled to the protection of Section 8(b)(4)(A) of the Act, although specifically excluded from the definition of "employer" contained in Section 2(2). The case does not support the theory of the Board because the railroad clearly fell within the definitions of the word "person" outlined in Section 2(1), and the Court's reference to "railroads" in the context of the case was intended merely as a generic reference to the business of the appellee. The Court did not undertake a redefinition of the word "person" so as to include "railroads" and thereby ignore the corporate or other status of the railroad within the meaning of "person" in Section 2(1).

In *I.B.E.W., Local 313*, the issue was whether a governmental subdivision was a "person" under Section 8(b)(4)(A). Here it is clear, at least from the decision of the Third Circuit, that "public interest" and "public policy" in protecting a *genuinely* neutral governmental employer from acts proscribed by Section 8(b)(4) dictated the result. The case, when viewed in this context, does not stand for the proposition that the definition of "person" in Section 2(1) of the Act is not all-inclusive. Moreover, it should be emphasized that a political subdivision, such as a county, is a legal entity with rights and duties recognized by law. As such, it must be viewed as a "person" at least in the

juristic sense of that term. The same result does not follow, however, with reference to the operating divisions of The Hearst Corporation, because those divisions are in no way distinct legal entities.

B. The Legislative History of the 1959 Amendments to the National Labor Relations Act Supports the Conclusion That the News American is not a "person" Within the Meaning of Section 8(b)(4).

The Trial Examiner and the Board also contend that the legislative history of the Act supports the conclusion that the definition of "person" contained in Section 2(1) is not all-inclusive. In this regard, the Trial Examiner reasoned as follows:

"The legislative history of the 1959 amendments to the Act make it crystal clear that Congress meant to expand the concept of 'employer' as used in Section 8(b)(4) to its fullest scope, or as one leading exponent of the legislation put it, 'to its full dictionary meaning.' In my view, such a comprehensive definition of 'employer' readily encompasses a separate, autonomous, and independently operated division of a corporation" (App. 163).

It would appear that this analysis is somewhat superfluous, for if a Hearst Division is an "employer" within the scope of Section 8(b)(4), it must certainly have enjoyed that status prior to the replacement of the term "employer" by "person" in the 1959 amendments. Thus, the question of whether the 1959 amendments were intended to expand the definition of "employer" to "its full dictionary meaning" need not be answered. Moreover, the quoted language relied upon by the Trial Examiner is but a portion of the following complete comment made by Senator Goldwater:

"Secondly, by substituting the term 'person' for the term 'employer', it broadens the scope of the latter

term to its full dictionary meaning instead of the limited meaning which it has under the definition of 'employer' — in Taft-Hartley. 'Employer' is defined in Taft-Hartley to exclude employers subject to the Railway Labor Act; agricultural employers; all governmental agencies, bodies or corporations; Federal Reserve banks; and nonprofit hospitals. 'Employee' as defined does not include employees of the above excluded employers." (II Legis. His., L.M.R. & D.C. 1857).

When viewed in context, it is clear that the substitution of the word "person" for "employer" in the 1959 amendments was designed to close certain loopholes in Section 8(b)(4), thereby extending the protection of that provision to public employers, railroads, and agricultural employers. Indeed, it was only in this context that the statement was made concerning the expansion of the term "employer" to "its full dictionary meaning", and nothing in this portion of the legislative history reveals a congressional intent to define "person" beyond the express terms of Section 2(1).

In essence, then, the Board and the Trial Examiner erroneously rely upon two pre-1959 cases interpreting Section 8(b)(4), together with selected portions of the legislative history of the 1959 amendments to support the conclusion that the definition of "person" in Section 2(1) of the Act is not all-inclusive. As has been demonstrated, however, this conclusion is completely unwarranted and in no way supported by the cited material. Prior to 1959, the statute spoke in terms of "employer" rather than "person", and consequently problems arose in extending the Act's protection to certain entities which, although "employers" within the normal meaning of that term, were specifically excluded from the definition of "employer" contained in Section 2(2) of the Act. Faced with the prospect of secondary pressure being exerted upon the excluded entities — namely, railroads, agricultural employers, government bodies, Federal

Reserve Banks, and nonprofit hospitals — with no corresponding legal restraints, the Courts in *Teamsters, Local 25* and *I.B.E.W., Local 313* responded rationally. Thus, it was held, respectively, that a railroad and a county, as genuinely neutral employers, were entitled to the Act's protection as "persons" within the meaning of Section 2(1).

In 1959, Congress relieved the Courts of the duty to close the loopholes in the law by amending the Act. Thus, the term "person" was substituted for "employer" in order to accomplish a specific result — extension of the Act's protection to those entities formerly specifically excluded under the definition of "employer". Indeed, it was in this context, and only this context, that Senator Goldwater spoke of extending the term "employer" to "its full dictionary meaning."

Accordingly, it can easily be seen that the issues presented for the court's decisions in *Teamsters, Local 25* and *I.B.E.W., Local 313* are totally ungermane to any questions presented in the instant case. So, too, with the legislative history surrounding the 1959 amendments to the statute. For the purposes of the present litigation the Act stands amended, and it simply will not suffice to cite prior case law now presently incorporated into the amended Act. Whatever significance may attach to the theory of the Trial Examiner and the Board, it is nevertheless clear that the cited authority has no bearing on the question of whether an operating division of a corporation enjoys the status of a "person" under Section 8(b)(4) of the Act.

C. The Board Decision in This Case is an Unwarranted Extension of Existing Board and Court Cases.

In determining whether separate companies are considered to be single employers within the meaning of the

Act, the Board has always started with whether the two companies were separate legal entities. *American Furniture Company, Inc.*, 116 NLRB 1290 (1956). The Board then evolved the policy in applying Section 8(b)(4) that an employer who is "in cahoots with or acting as part of the primary employer" is not entitled to the protection of Section 8(b)(4), and therefore one who allies himself with the primary employer may be picketed as if he were the primary employer. *International Brotherhood of Teamsters, Local 179*, 128 NLRB 916, 918, 919 (1960). Here, then, the Board has made one "person" out of two separate legal entities, which is something different than making two persons out of one legal entity.

The Trial Examiner, and later the Board, relied upon a series of cases commencing with *Roy & Sons, Co. v. N.L.R.B.*, 251 F. 2d 771 (1st Cir., 1958) and *Bachman Machinery Co. v. N.L.R.B.*, 266 F. 2d 599 (8th Cir., 1959) (App. 158-159).

United Brotherhood of Carpenters (J. G. Roy & Sons), 118 NLRB 286 (1957) came before the Board in 1957 before the Amendments. In that case, the union had a dispute with a non-union lumber company and attempted to spread the strike to a construction company, both companies being commonly owned by the Roy brothers. The Board found that the construction company and the lumber company were, because of the common ownership and control, "so allied" as to be one employer under Section 8(b)(4). The First Circuit, however, reversed the Board stating:

"An analysis of the citations relied upon by the Board in support of its contention that *two separate corporate entities may be regarded as one employer* fully supports our conclusion that such a finding in the instant case is unwarranted." (Emphasis supplied.) 251 F. 2d at 774.

The Court then held that when two corporate entities are commonly owned there must be in addition actual common control as opposed to potential control.

Shortly thereafter in *Warehouse and Distribution Workers Union, Local 688 (Bachman Machine Co.)*, 121 NLRB 1229 (1958), the Board held that a tool and die company picketed by a union in furtherance of a strike against a plastic company was permissible under Section 8(b)(4) because the two companies were commonly owned. Here again the Board was reversed by the Court, *Bachman Machine Co. v. N.L.R.B.*, *supra*.

In reviewing the case, the Eighth Circuit said:

"The Board based the dismissal upon the grounds that the relationship between the two corporate employers was such, because of common ownership and actual common control over labor policies, that they constituted allied employers and were, for the purposes of Section 8(b)(4)(A), a single employer."

* * * * *

"The question then is whether there is an adequate evidentiary and legal basis for the Board's determination that the two corporate employers were so closely allied as to constitute one employer for the purposes of Section 8(b)(4)(A)." 266 F. 2d at 600, 601.

The Board in the remanded proceeding recognized this to be the issue in saying that "the Court ruled that the Board erred in finding that the two companies were a single employer for the purposes of Section 8(b)(4)(A)." *Bachman Machine Co.*, 124 NLRB 743, 744 (1959).

In two other cases heavily relied upon by the Trial Examiner, *Miami Newspaper Printing Pressman, Local 46*, 138 NLRB 1346, *enfd.* 116 U.S. App. D.C. 192, 322 F. 2d 405 (C.A. D.C. 1963), and *Drivers and Helpers Local No. 639*

(*Poole's Warehousing Inc.*), 158 NLRB 1281 (1966), there were two separate corporate enterprises (App. 158-161). In each case the issue before the Board was whether the two entities constituted one person. It is in this context that the Board and Courts discuss active and actual common control as well as common ownership.

The Board has never held that two premises of the same entity could not be picketed in furtherance of a labor dispute with but one of the premises. Indeed, in several cases, this is assumed without much discussion.

In *Teamsters Local 386, etc. and California Association of Employers*, 120 NLRB 1161 (1958), the issue was the legality of ambulatory picketing of the company's trucks. The company, Topper Feed Mills, had a mill in Fresno, California, and a sales outlet in Modesto, California. The dispute was with the Fresno mill, but a sister Local picketed the sales outlet at Modesto. The Board assumed without discussion that this picketing was legal and the Trial Examiner states: "Topper's plant at Fresno and store at Modesto, California were picketed. There is no issue with respect to this picketing admittedly peaceful and primary in character." 120 NLRB at 1164.

In *International Brotherhood of Teamsters, Local 179*, 128 NLRB 916 (1960), the union in furtherance of a dispute with the employer's Joliet, Illinois, warehouse picketed warehouses in Peoria and and Urbana, Illinois. The Board, holding this picketing to be lawful primary activity, said:

"Though the economic dispute with Alexander directly involved only Alexander's Joliet employees, Respondents had the right to bring pressure upon Alexander at each and every one of its warehouses. The Peoria and Urbana warehouses are no more to be considered neutral premises for purposes of applying the provisions of Section 8(b)(4)(a) than are the premises of

an employer who 'allys' himself with a primary employer." 128 NLRB at 918.

Although the Board does discuss the question of common supervision and control, it appears from the Board's decision and the Trial Examiner's report which was reversed by the Board that this was not the controlling factor, contrary to the analysis of Trial Examiner Singer herein (App. 165).

The instant case and *Los Angeles Newspaper Guild Local 68, et al.*, 185 NLRB No. 25, then, appear to represent an unwarranted extension of previous Board holdings.

II.

THE ECONOMIC FACTS OF THE RELATIONSHIP BETWEEN HEARST DIVISIONS AND THE HEARST CORPORATION CLEARLY SHOW THAT THE HEARST CORPORATION IS ONE "PERSON" UNDER SECTION 8(b)(4) OF THE NATIONAL LABOR RELATIONS ACT.

The Board concluded that The Hearst Corporation does not exercise actual and active control over the operations of the divisions and hence reasons, placing heavy reliance upon *Miami Newspaper Printing Pressman's Local No. 46 (Knight Newspapers, Inc.)*, *supra*,

"... that if these two divisions were corporate subsidiaries instead of divisions, they would be entitled to the protection of Section 8(b)(4)(B) from each other's labor disputes. To deprive them of the protection of the statute on the technical ground that they are merely divisions of the Corporation would exalt form over substance, a result which we are convinced is not required by the statute." *Los Angeles Newspaper Guild, Local 68, et al.*, 185 NLRB No. 25, p. 5.

It is worthless to state that the Union is exalting form over substance by attempting to prove that a different result

would follow, on the basis of the *Miami Newspaper Printing Pressman's* case, had Hearst chosen to operate each division through a subsidiary corporation. The decision to operate through corporate structures has significant legal effects. Moreover, the economic facts of the relationship between the divisions and Hearst differ substantially from those between the two corporations in the *Miami Pressman's* case. That case arose out of an economic strike by employees of a Miami newspaper, a Florida corporation the stock of which is wholly owned by Knight Newspapers, Inc., an Ohio corporation which publishes a newspaper in Detroit. There, the Board and this Court found that both Knight and the Miami Herald were operated as separate and autonomous corporations with separate managing heads acting completely independent. Thus, it is clear that in the *Miami* case both the Miami Herald and Knight Newspapers, Inc. were separate "persons" in every sense, and the inquiry to be made there was whether there was a sufficient unitary status of two "persons" so as to treat them as one under Section 8(b)(4) of the National Labor Relations Act.

Here the inquiry is not whether two "persons" should be treated as one but whether two parts of a single "person" should be treated as separate "persons."

The operational evidence confirms the conclusion that the single "person" involved is The Hearst Corporation.

The Hearst Corporation is operated by three executives in New York City — its president, executive vice president, and treasurer — and by a Board of Directors, the Chairman of which is William Randolph Hearst, Jr. (App. 96). The President, Richard Berlin, appoints all divisional heads, including publishers of newspapers and general managers of television and radio stations (App. 97). During 1968,

Brent Gunts was general manager of WBAL-TV, Alfred Burk was general manager of WBAL-Radio, and Mark Collins was publisher of the News American (App. 99-100). Each is directly responsible to Hearst's president and executive vice president (App. 100). Gunts and Burk also have the title "Vice President and General Manager, WBAL Division, The Hearst Corporation", the television and radio station together comprising one division (App. 100).

Mr. Collins, Mr. Gunts and Mr. Burk are paid employees of Hearst, transferable and removable at the will of Mr. Berlin or the executive vice president and/or the Board of Directors (App. 110). Mr. Collins has a personal service contract with Hearst that empowers Hearst to transfer him anywhere in the Hearst organization and at any time (App. 110).

Until November, 1966, a Hearst Vice-President, D. L. Provost, with an office in Baltimore possessed final responsibility on a day by day basis over the radio and television operation of WBAL as well as over WISN, the Hearst station in Milwaukee, Wisconsin (App. 107). Mr. Provost's responsibility included labor relations, and he counter-signed and approved the 1965-1968 collective bargaining agreement between AFTRA and WBAL on behalf of Hearst (App. 108-109).

Upon the retirement of Mr. Provost in November, 1966, Mr. Berlin broadened the responsibilities of the employees who headed the television and radio divisions, gave them the title of "Vice President" and assigned to them much of the day by day responsibilities previously exercised by Mr. Provost (App. 39). Nonetheless, the contractual requirement that the labor agreement must be approved by Hearst before becoming effective remains (App. 107-108, 130-131). Hearst counsel, both in Baltimore and New York,

handle all legal matters, including labor relations problems (App. 30-31). Hearst approves budgets and capital expenditures over \$10,000.00 (App. 34). And, indeed, Hearst officials in New York are called upon to settle advertising disputes between Hearst Divisions.

Hearst supplies an engineering office for the radio and TV stations (App. 14), and offers to all divisions company-wide pension plans, insurance policies and salary continuation plans (App. 14-15, 26-27, 72-74). Budgets are submitted both by the station and the newspaper (App. 11, 69-70, 126), and profit and loss statements are submitted monthly (App. 10-11).

Hearst enterprises that do business with each other exchange no funds, but payment for whatever charge is made by one such enterprise to another is effected through a clearance system whereby bookkeeping entries are made debiting one enterprise and crediting another (App. 117).

Mr. Berlin, President of Hearst, described this alleged "independence" of operation (App. 105):

"He makes his own budget. If he goes overboard he will hear from us, if we think that he is not operating it"

Earlier, he testified (App. 100):

"... if the time came that they were not doing what I considered a satisfactory job and a satisfactory performance in such duties then we would relieve them and put someone else in"

In other words, publishers and managers are appointed by Hearst and are relieved by Hearst according to "the bottom line" (App. 97, 101-102).

Finally, in the area of labor policy, key personnel are signed to Hearst personal service contracts which give

Hearst — not the individual newspaper — the exclusive right to their services and which contracts permit Hearst to move its personnel from division to division (App. 131-139). Thus, the present publisher was moved from the Albany, New York, paper (App. 114). The business manager and his predecessor grew up and moved about various Hearst newspapers (App. 55). What greater degree of control could be exercised than the signing of key personnel to service contracts that enable Hearst to move this personnel throughout the Hearst empire.

In addition to the internal singleness of the operation, public representation is also made as to the single nature of The Hearst Corporation.

The applications for renewal of broadcast station license filed with the F.C.C. by WBAL-TV and WBAL-AM dated June 24, 1966 (the most current applications) show the applicant to be "The Hearst Corporation" with two New York City addresses and the person to be communicated with as "D. L. Provost, The Hearst Corporation" at the same New York City address (App. 140-146).

The applicant's ownership report was "filed with WTAE-TV, Pittsburgh, on 4-29-66" (App. 140-142).

Paragraph 2, Section 1, on each application appearing after Section IV, p. 4, of the T.V. application and on the second page following signatures on the radio application states:

"Applicant is the owner and operator of newspapers, feature service and other publishing interests. In the conduct of the publishing business, applicant is subjected from time to time to libel and other civil suits. There are, however, no suits pending of the character described in Paragraph 2 which involved monopolizing, attempt to monopolize or use of unfair methods of competition in radio communications, directly or indirectly" (App. 140-146).

The Court's attention is also called to Exhibit No. 2 of the radio application (App. 143).

With respect to The News American, the application reveals that,

"... contact [is] maintained with the Baltimore News-American daily newspaper, so that reporters can be dispatched to the scene of fast-breaking local news events" (App. 144).

In sum, WBAL officially in its F.C.C. license states that it is "*owned and operated*" by Hearst Corporation. In accordance with F.C.C. regulations it announces to the public at sign-on and sign-off time that it is "*owned and operated by The Hearst Corporation.*" In addition, many times a day the public is informed that WBAL is "*The News American station*" and that it has "*direct lines to The News American.*" Thus again and again WBAL holds itself out to the public in Baltimore and elsewhere that it and The News American are one and the same, i.e., owned and operated by Hearst (App. 17, 19-20).

The evidence further reveals that, as stated in the license application, contacts between the station and the newspaper in the news area is maintained (App. 144). Thus when Hearst management decided that the News American reporters should file carbon copies of their news stories to be used by WBAL, it was done (App. 20-22). Because this later proved to be ineffective news coverage does not negate the single nature of the operation.

A mere recitation of these operational factors demonstrates that to treat The Hearst Corporation as one "person" is not to "exalt form over substance".

The clear intent and purpose of Sections 8(b)(4)(i) and (ii)(B) was to prevent a Union from placing certain pressures on a "genuinely neutral" employer to compel that employer to cease purchasing from, selling to, or render-

ing services to the primary employer. What was the purpose of the picketing of the News American? Clearly and obviously not to force or require the News American "to cease using, selling, handling, transporting or otherwise dealing in the products" of WBAL and certainly not to force or require the News American to cease doing business with WBAL. The clear, obvious, certain purpose was to put economic pressure on "The Company", the "person", the "employer" who was the only economic employer, the Hearst Corporation. It was, in the words of Mr. Berlin, Hearst's President, to make them look at the "bottom line" (App. 106). For, in this dispute as in most strike situations, it is the economic pressure on the employer that counts. It is proscribed by the Act to put on that pressure by forcing neutrals to cease doing business with the employer. It is not proscribed for a union to hit the employer where he can be found.

It is for this reason that it could not be intended that a corporation could receive immunity from economic pressure because it has placed wide discretion in the *employees* who head various divisions. Mr. Berlin or the Executive Vice-President or the Hearst Board could have settled the dispute between AFTRA and WBAL in five minutes, yet the Board would deprive the Union of the right to impose primary sanctions upon them in the one area where they would be induced to intervene — the pocketbook, the "bottom line."

CONCLUSION

It is submitted by the Union that nothing in the Act or in judicial interpretations of its provisions justifies a scaling down of the rights guaranteed to the employees of Hearst's WBAL Division in Sections 7 and 13. The decision of the Board, in the final analysis, acts to prohibit those employees from bringing economic pressure to bear upon their

employer — the Hearst Corporation. Given the fact that the Hearst Corporation, of its own volition, has chosen to manage its affairs through the medium of divisions, it seems inequitable to shape the legal consequences of such action to the detriment of an innocent party — Hearst's employees. Clearly, it is Hearst which has decided to operate as it has, and as with any similar business decision there are certain legal consequences attached. Accordingly, it is submitted that Hearst — and on one else — should bear the burden of its own choice. To conclude, the crux of this entire case is perhaps best stated by Member Brown, dissenting from the opinion of the Board majority (App. 173-174):

"That Hearst is a direct party to labor disputes involving its separate divisions is not only inherent in the structure of the enterprise but is a matter of cold economic fact. As was so cogently stated by Trial Examiner Marx in the *San Francisco Examiner* case, *supra*:

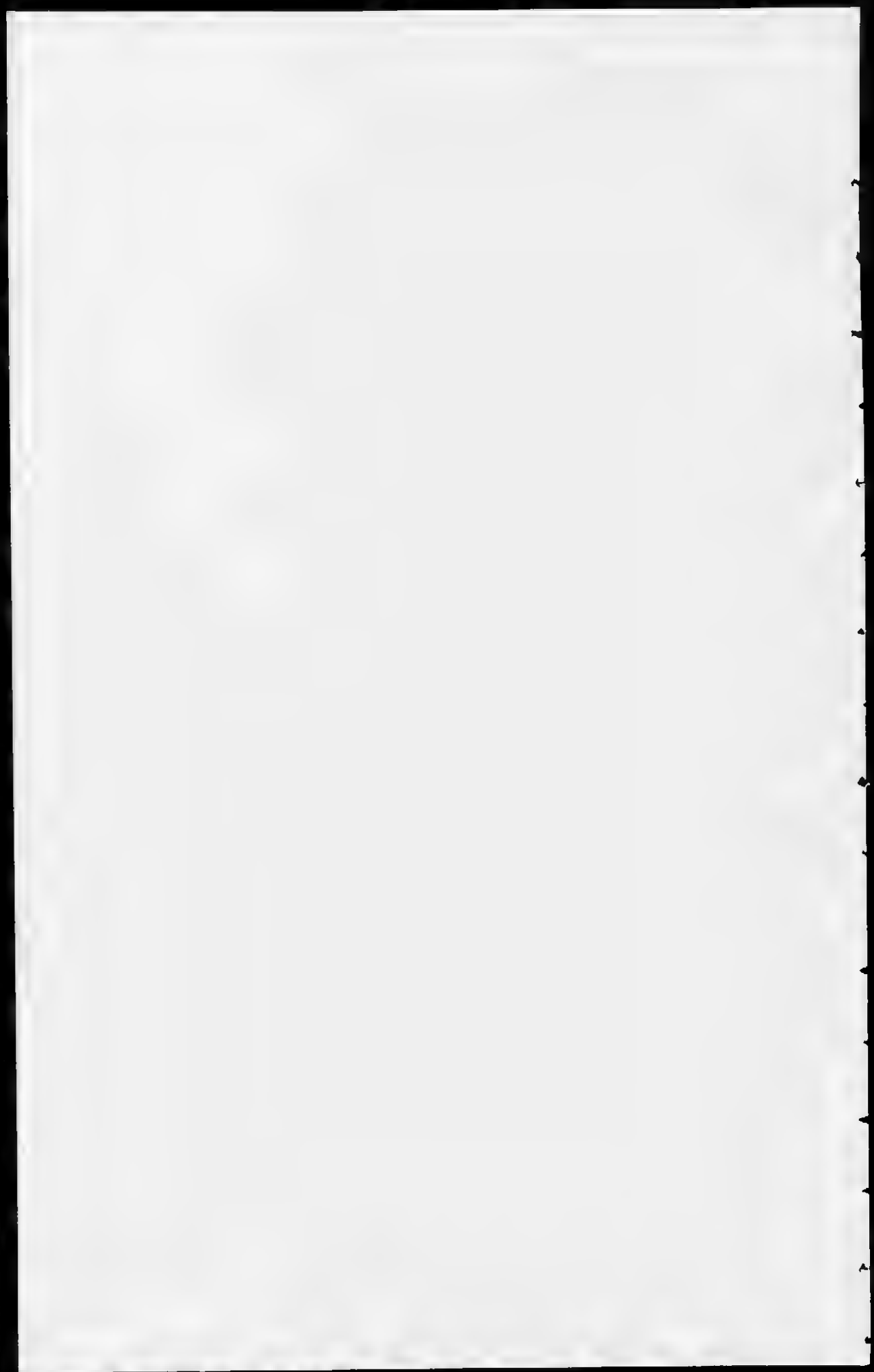
"The "operating profits" made by the Hearst divisions are fuel for the total corporate body and, together with other economic resources of the Corporation, are available at its will to sustain any division in a contest of legitimate economic pressures involved in a labor dispute between a union and the management of the division or, in other words, with Hearst. The right and power of the Corporation to muster its economic resources to such an end, irrespective of their divisional source, underscores the need for recognition of a correlative right in the union to engage in "otherwise" lawful picketing of premises of the Corporation other than the dispute situs.'"

Respectfully submitted,

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
WASHINGTON-BALTIMORE LOCAL, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,
and

THE BALTIMORE NEWS AMERICAN DIVISION,
THE HEARST CORPORATION,
Intervenor.

On Petition for Review and Cross-Appeal
for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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United States Court of Appeals
for the District of Columbia Circuit

FILED APR 21 1971

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INDEX

	<u>Page</u>
COUNTERSTATEMENT OF THE ISSUE PRESENTED	1
COUNTERSTATEMENT OF THE CASE	2
I. THE BOARD'S FINDINGS OF FACT	2
A. Background: The relationship between Hearst and its divisions	3
B. AFTRA strikes WBAL and pickets News American	8
II. THE BOARD'S CONCLUSION AND ORDER	10
ARGUMENT	10
I. THE BOARD PROPERLY FOUND THAT THE UNION UNLAWFULLY PICKETED THE NEWS AMERICAN IN FURTHERANCE OF ITS DISPUTE WITH WBAL, SINCE THE NEWS AMERICAN, AS AN AUTONOMOUS ENTER- PRISE PUBLISHING NEWSPAPERS WITHOUT ACTUAL DIRECTION OR CONTROL BY HEARST, IS A "PERSON" ENTITLED TO THE PROTECTION OF SECTION 8(b)(4) OF THE ACT	10
A. The News American has the essential economic attributes of a separate employing enterprise, and it was not in fact a party to the dispute between the Union and WBAL.	10
B. Common ownership by Hearst does not deprive the News American of the protection of Section 8(b)(4), because Hearst exercises no actual or active control of the day-to-day operations or labor policies of its broadcast and newspaper enterprises	15
C. There is no support for the Union's contention that the economic "separateness" of two employ- ing enterprises is legally irrelevant where the enter- prises are held by the parent corporation as unincor- porated divisions rather than incorporated subsidiaries	22

	<u>Page</u>
CONCLUSION	31
GENERAL COUNSEL'S EXHIBITS	32

AUTHORITIES CITED

Cases:

Amalgamated Lithographers of America, 130 NLRB 968 (1961)	16
Argosy Ltd. v. Hennigan, 404 F.2d 14 (C.A. 5, 1968)	24
*Bachman Machine Co. v. N.L.R.B., 266 F.2d 599 (C.A. 8, 1959)	16
Bowater S. S. Co. v. Patterson, 303 F.2d 369 (C.A. 2, 1962)	18
Carpet, Linoleum, etc. Layers, Local No. 419 v. N.L.R.B., ___ App. D.C. ___, 429 F.2d 747 (1970)	17
Chicago, M. & St. P. Ry. v. Minn. Civic Ass'n, 247 U.S. 490 (1918)	18
*Drivers, Chauffeurs & Helpers Local 639, etc., 158 NLRB 1281 (1966)	16
Fed. Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95 (1941)	24
Georgia v. Evans, 316 U.S. 159 (1942)	23
*I. B. T., etc. Local 179, etc., 128 NLRB 916 (1960)	16, 27
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	<u>Page</u>
Local 761, I.U.E. v. N.L.R.B., 366 U.S. 667 (1961)	12
*Local 1976, Carpenters v. N.L.R.B., 357 U.S. 93 (1958)	12
*Los Angeles Newspaper Guild, Local 69, <i>et al.</i> , 185 NLRB No. 25 (1970)	8, 16, 26, 28, 29, 30
*Miami Newspaper Pressmen, etc., 138 NLRB 1346 (1962)	19, 21
*Miami Newspaper Pressmen's Local 46 v. N.L.R.B., 116 App. D.C. 912, 322 F.2d 405 (1963)	16, 18, 19, 20, 23, 31
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New York Typographical Un. No. 6, 141 NLRB 1209 (1963)	24
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Plumbers' Local 298 v. County of Door, 359 U.S. 354 (1959)	24
*Roy, J. G. & Sons Co. v. N.L.R.B., 251 F.2d 771 (C.A. 1, 1958)	16
*San Francisco-Oakland Newspaper Guild, <i>et al.</i> v. Kennedy, 412 F.2d 541 (C.A. 9, 1969)	16

* Authorities chiefly relied upon.

	<u>Page</u>
Teamsters, Local 25 v. N.Y. N.H. & H. Ry. Co., 350 U.S. 155 (1956)	24
U. S. v. Gertz, 249 F.2d 662 (C.A. 9, 1957)	24
U. S. v. Graham, 309 F.2d 210 (C.A. 9, 1962)	24
*U. S. v. Shirey, 359 U.S. 255 (1959)	23, 26
 Statute:	
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, <i>et seq.</i>)	2, 10
Section 2(1)	23, 24
Section 2(2)	27, 28
Section 8(b)(4)	2, 10, 15, 31
Section 8(b)(4)(i)(ii)(B)	2, 10
Section 8(b)(4)(B)	12, 15
Section 10	26
Section 10(c)	2
Section 10(e)	2
Section 10(f)	2
Section 10(1)	9
 Miscellaneous:	
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93 Cong. Rec. 4198, II Leg. Hist. (1947) 1106	15
II Leg. Hist. 59, p. 1957	28
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
WASHINGTON-BALTIMORE LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

THE BALTIMORE NEWS AMERICAN DIVISION,
THE HEARST CORPORATION,

Intervenor.

On Petition for Review and Cross-Applcation
for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that the Union violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing the News American in furtherance of its labor dispute with WBAL.

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of the American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO (hereinafter referred to as "AFTRA" or "the Union") to review and set aside an order of the National Labor Relations Board issued against it on August 27, 1970, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*). The Board has cross-applied for enforcement of its order, reported at 185 NLRB No. 26 (A. 170-171).¹ This Court has jurisdiction over the proceedings under Section 10(e) and (f) of the Act.

I. THE BOARD'S FINDINGS OF FACT

The Board found that AFTRA picketed the premises of the Baltimore News American Division, The Hearst Corporation (hereinafter "the News American"), with whom it had no dispute, thereby coercing it and inducing its employees to strike in furtherance of its labor dispute with WBAL Division, The Hearst Corporation (hereinafter "WBAL"), in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. This finding is based upon the Board's conclusion that the News American and WBAL are separate persons within the meaning of Section 8(b)(4) of the Act. The relevant evidence is summarized below.

¹ "A." references are to the printed Appendix. Those references preceding a semicolon are to the Board's findings; those following are to the supporting record evidence.

A. Background: The relationship between Hearst and its divisions

The Hearst Corporation, headquartered in New York City, is a diversified corporate empire, comprising, *inter alia*, 20 to 30 unincorporated divisions, engaged in a variety of enterprises throughout the country ranging from newspapers to cattle ranches (A. 150; 97-99).² Hearst's corporate officers, with offices in New York, are its president, executive vice president and treasurer (A. 150; 96). As the chief executive, the president appoints division heads, including the publishers of newspapers and general managers of television and radio stations (A. 150-151; 97, 99). During the period herein involved, Brent Gunts was general manager of WBAL-TV; Alfred Burk, general manager of WBAL-Radio; and Mark Collins, publisher of the News American (A. 151; 97, 8). Gunts, Burk and Collins do not sit on the board of directors but are responsible to Hearst's president and executive vice president (A. 151; 10, 37-38). When President Richard Berlin appointed these men to fill their respective posts, they were instructed "that this was their job and they should run it as if they owned it — the paper, the radio, the television station — and if the time came that they were not doing what [he] considered a satisfactory job and a satisfactory performance in such duties then [he] would relieve them and put someone else in; but this was their position and they would be responsible and they would have no interference" (A. 151; 100, 39).

² Hearst's divisions are also engaged in the operation of radio and television stations, the production of motion pictures, and real estate and timberland ventures (A. 150; 97-100). The newspapers published by Hearst's divisions are located in Seattle, San Francisco, Los Angeles, San Antonio, Boston, Albany and Baltimore, while its television and radio stations originate in Pittsburgh, Milwaukee, Baltimore and Puerto Rico (A. 150, n. 5; 99).

In actual practice, the two divisions here involved — WBAL and the News American — function independently of each other and of their parent corporation. Thus, each publisher and general manager has substantially complete autonomy in the daily operation of his division (A. 151-152; 100-101).³ Publisher Collins, for example, has final authority in the formulation and effectuation of policy covering news, editorials, production, advertising, and circulation (A. 151-152; 101, 115-116).⁴ Collins, and his WBAL counterparts as well, determine the size and composition of their own staffs, hire and fire and fix employee salaries, set advertising rates and service charges, and formulate and implement labor relations policies (A. 151-152; 101-102, 116-117, 9-10, 60-61).

Thus collective bargaining agreements between the divisions and the respective unions representing their employees are negotiated and administered separately by each division head (A. 154; 12-13. News American's employees are represented by 11 unions, none of which includes AFTRA (A. 154, n. 14; 55-56). The negotiations with 6 of the unions were conducted jointly with the non-Hearst Baltimore Sun (A. 154, n. 14; 60).

³ Since television and radio was initially an unfamiliar field for Hearst, the corporation felt that it needed someone to maintain "close contact" with Federal Communication Commission requirements (A. 151, n. 7). Hence, until his retirement in 1966, a Hearst executive, D. L. Provost, with an office in Baltimore, was given jurisdiction over every Hearst radio and television station and operation including its labor relations (A. 151, n. 7; 23-25, 39). Following his retirement Hearst "dissolved" its New York Radio and Television Division, and the individual radio and television managers were instructed to operate their respective stations on their own (A. 151, n. 7; 39-40, 50-51).

⁴ There are no central policy directives from Hearst as to how the various newspapers are to be run (A. 109). Indeed, in such vital areas as editorial endorsement of a presidential nominee, the Hearst newspapers divided their loyalties between Humphrey and Nixon in 1968; thus, while the News American supported Nixon, it later published "the Editor's Report" by William Randolph Hearst, Jr., chairman of the board of directors for Hearst, supporting Humphrey (A. 119-122; G.C. Exhs. 3a, 3b, 4a, 4b — *News American*, Oct. 20, 1968, p. 2H; Nov. 3, 1968, p. 1, Supplemental Appendix *infra*, pp. 32-34).

During Provost's tenure as head of Hearst's Radio and Television division (*supra*, p. 4, n. 3), the last contract between WBAL and AFTRA (September 1965-September 1968) provided that it "shall not become binding and effective . . . until it has been countersigned" by an "appropriate executive of the Hearst Corporation," with no such provision appearing in News American's contracts with its unions (A. 154; 22-24, 93-95). Prior to Provost's appointment, the earlier WBAL-AFTRA contract, which expired in September 1965, did not require the approval by Hearst, and presently, according to WBAL Manager Gunts, final authority to conclude and sign a contract "without reference to New York" rests exclusively with him (A. 154-155, n. 15; 34-35).

Each division subscribes independently to news services of its own choosing, such as the Associated Press and United Press International, and each is free to use any or none of the Hearst-owned services or features (e.g., Hearst Headline Service, King Features) or syndicated columns (A. 152; 21-22, 38, 104-105, 111).⁵

There is, however, some day-to-day contact between WBAL and the News American (A. 152; 20). A direct line connects them to each other through commercial telephone communications "so that reporters can be dispatched to the scene of fast-breaking local news events" (A. 152, 155, n. 17; 20). WBAL announces on the air that it is "the News American Station" or is "affiliated with the News American," and that it has a

⁵ For example, the News American uses less than 10 per cent of the material sent to it by the Headline Service (A. 64). However, in order to take advantage of economies of scale, the News American purchases all its newsprint from Hearst's newsprint division, although it is free to purchase newsprint from any source (A. 152, n. 8; 111). Similar economy considerations have led to the purchase of engineering services from Hearst's engineering office by the management of WBAL-TV (A. 152, n. 8; 13-14).

direct line "to the News Division and NBC" (A. 152; 15).⁶ As the sample copies of the *News-American* reproduced *infra* (pp. 32-34) show, however, neither the masthead nor the front page of the *News American* carries any reference to News American's affiliation with Hearst Corporation or WBAL. Both divisions advertise in each other's medium, but these transactions are at arm's length and at rates fixed by each medium for all their advertisers (A. 152; 15, 67), although the transaction is effected as a "trade deal" with no cash passing between the divisions (A. 152, n. 10; 48-49, 50-51). Indeed, WBAL and the *News American* are "highly competitive" in an attempt to be "first with the news" and "compete actively for the advertising dollar of the community" (A. 152; 17, 66-67).⁷ Ironically, WBAL subscribes to the *News American* at the going rate, but receives the non-Hearst Sunpapers free of charge (A. 16-17).

WBAL and the *News American* do not exchange employees, although upon occasion each division contracts for the services of certain personalities employed by the other (A. 152-153; 16, 60-61).⁸ For example, WBAL has engaged *News American* reporters and writers to broadcast or serve on discussion panels, while *News American* has hired WBAL personnel to

⁶ WBAL's most recent applications for renewal of its broadcast station license filed with the Federal Communications Commission in June 1966 were made in the name of Hearst as owner (A. 155; 19, 143). According to WBAL-TV Manager Gunts it is "not unusual" for television stations, owned or affiliated with newspapers, to announce and identify their affiliations, a practice which is followed by another Baltimore television station which is connected with the "Sunpapers" (A. 152, n. 9, 17).

⁷ Sometime during 1965 or 1966, an attempt was made to exchange news stories and coordinate the news gathering resources of both WBAL and *News American*. This attempt proved unsuccessful because of the inherent competitiveness of the two divisions and was consequently abandoned and never revived (A. 152; 21-22, 38).

⁸ They do retain the same local attorneys to handle all legal matters including labor relations, but neither WBAL nor *News American* seeks or receives legal guidance from Hearst's New York legal department or labor relations counsel (A. 155; 18, 30-31, 61-62).

write newspaper columns (A. 153; 31-32, 51-54). However, the individual who is employed by one division and loaned out to the other enjoys the status of an "independent contractor," receiving, for example, in the case of a News American reporter, a fee for each WBAL show that he appears on (A. 153; 16). This arrangement is effected without obtaining the approval of the individual's immediate employer or of Hearst, and each of the contracting parties is free to terminate the agreement at any time at its own volition (A. 153; 53, 79-80, 84-86).⁹ WBAL hires personnel employed by other newspapers and other news services on a similar basis (A. 153).

Hearst offers to all its divisions certain fringe benefits, such as insurance, pension, and salary continuation plans or programs (A. 153; 25, 26-27). However, each division, at its discretion, is free to use or reject one or all of these plans, with each division paying the operating expenses for the plan or plans it utilizes (A. 153; 27-28, 38-39). Thus, WBAL has instituted its own health insurance plan, which has no connection with Hearst (A. 153; 41-42). According to WBAL Manager Gunts, the station had rejected an alternate Hearst plan "which [it] didn't feel was quite rich enough for what we wanted in our division" (A. 153; 42). Similarly, some of the plans in effect at News American were negotiated

⁹ Such arrangements exist between the News American and WBAL employee Melva Zeal, who writes her column as "Mollie Martin," and between WBAL and News American Sports Editor Steadman who acts as a sportscaster (A. 153; 51-54, 84-86). These contractual agreements prevail despite a provision in the latter's "personal service" contract with Publisher Collins, signed by Collins on behalf of "The Hearst Corporation (Baltimore News American Division)" that Hearst "shall have the right to transfer" Steadman to any of its divisions (A. 153, n. 11; 77-78). According to the uncontroverted testimony of Hearst President Berlin, this transfer or assignment clause "has never been used, never been put in force" (A. 153, n. 11; 110). Publisher Collins' contract with Hearst contains the same provision, but in moving from one Hearst division to another he was never "transferred" under this clause; each of his assignments have been negotiated as if Collins were an applicant (A. 153, n. 11; 110, 115).

between it and the labor organizations representing its employees, while a union pension plan covering WBAL employees, known as the Broadcast Pension Plan, is available only to radio and television employees represented by the Union (A. 153; 14-15, 68-69, 75).

Hearst's interest in its divisions is limited to what is termed the "bottom line," or the financial success of the enterprise (A. 151; 101).¹⁰ To this end, each division prepares and submits financial statements and budgets to Hearst in New York, primarily for informational purposes (A. 154; 10-11, 69-70, 105-106, 126-127). According to News American and WBAL officials, such budget submissions are never questioned or amended by Hearst (A. 154; 33-34, 126-127). In addition, each division maintains its own accounting and financial system, pays and collects its own bills, and has separate bank accounts from which it pays salaries and wages (A. 154; 62).¹¹

B. AFTRA strikes WBAL and pickets News American

AFTRA has represented WBAL's staff announcers and employees appearing before the cameras and microphones for many years. After its most recent collective bargaining agreement expired on September 1, 1968,

¹⁰ As in the case of most conglomerates, it would be virtually impossible for the limited number of Hearst's executive personnel to operate on a daily basis all of its diverse divisions and subsidiaries (A. 100-101).

¹¹ A division head may incur operational expenses which range as high as one million dollars, without any limitation from the parent corporation, but Hearst approval is necessary for capital expenditures which exceed \$10,000 (A. 154; 9, 102-103). However, Hearst has not actually vetoed capital expenditures (A. 161), which are apparently routinely authorized. See Board's decision in the companion case, *Los Angeles Newspaper Guild Local 69, et al (San Francisco Examiner, Division of Hearst Corp.)*, 185 NLRB No. 25, slip. op. p. 5 (1970).

negotiations for a new contract quickly reached an impasse, and on September 21, AFTRA struck and picketed WBAL in support of its contract demands (A. 149; 11-12). Two days later, pickets appeared at the premises of the News American, located in Baltimore some six miles away from the WBAL studio (A. 149; 56-57). The picket signs carried the following legend: "Information to the public, Radio and TV performers on strike against WBAL, Division of the Hearst Corporation, American Federation of TV and Radio Artists, AFL-CIO" (A. 149, n. 2; 57, 59). As a result, News American employees, represented by unions other than AFTRA, *supra*, p. 4, refused to report to work until 11 a.m. on September 23 when WBAL officials prevailed upon the newspaper unions to intervene and AFTRA withdrew its picket line from the premises of the News American (A. 149, 57-58). Nevertheless, on October 2 and 3, AFTRA pickets reappeared at the News American and newspaper employees again refused to cross the picket line (A. 149; 59). The picketing of the News American caused a reduction in the circulation of some of its editions and the curtailment of the size of other editions (A. 149; 60, 89).

On October 2, the Regional Director for Region Five of the National Labor Relations Board petitioned the United States District Court for the District of Maryland for an order temporarily enjoining the picketing at News American, pursuant to Section 10(1) of the Act (A. 149; 89-90). The Court granted the relief prayed for by the Regional Director, issuing its decision on October 21 in an opinion rejecting Union contentions which are essentially the same as those presented in the instant proceeding (*ibid.*). *Penello v. American Federation of Television and Radio Artists Washington-Baltimore Local, AFL-CIO*, 291 F. Supp 409 (1968).

II. THE BOARD'S CONCLUSION AND ORDER

Upon the foregoing facts, the Board found (Member Brown dissenting) that the News American is a neutral "person" entitled to the protection of Section 8(b)(4) of the Act against picketing by the Union in support of its dispute with WBAL. Accordingly, the Board found that the Union violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing employees of the News American to strike, and by threatening, coercing, and restraining the News American, with an object in each case of forcing or requiring the News American to cease doing business with its customers and suppliers. The Board's order directs the Union to cease and desist from its unfair labor practice and to post appropriate notices.

ARGUMENT

- I. THE BOARD PROPERLY FOUND THAT THE UNION UNLAWFULLY PICKETED THE NEWS AMERICAN IN FURTHERANCE OF ITS DISPUTE WITH WBAL, SINCE THE NEWS AMERICAN, AS AN AUTONOMOUS ENTERPRISE PUBLISHING NEWSPAPERS WITHOUT ACTUAL DIRECTION OR CONTROL BY HEARST, IS A "PERSON" ENTITLED TO THE PROTECTION OF SECTION 8(b)(4) OF THE ACT

- A. The News American has the essential economic attributes of a separate employing enterprise, and it was not in fact a party to the dispute between the Union and WBAL

Section 8(b)(4) of the Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959, provides, in relevant part, that it shall be an unfair labor practice for a union or its agents:

- (i) To engage in, or to induce or encourage any individual employed by any *person* * * * to engage in, a strike

or a refusal in the course of his employment to * * * perform any services; or (ii) to threaten, coerce, or restrain any *person* engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

(B) forcing or requiring any *person* * * * to cease doing business with any other *person* * * *
[Emphasis added].

The record shows that in furtherance of its dispute with WBAL the Union picketed the News American, whose employees were members of other unions. As a result, employees refused to cross the picket lines and the normal operations of the newspaper were disrupted. There is no question that by its picketing the Union induced and encouraged employees of the News American to strike and withhold their services and further, that the Union thereby restrained and coerced their employer with an object of forcing it to cease doing business with its customers and suppliers. Thus, the sole issue is whether the Board properly found that the News American is entitled to the protection of the secondary boycott provisions of Section 8(b)(4) of the Act — that is, whether the Board properly found that this enterprise is sufficiently separate to be considered a “person” distinct from WBAL within the meaning of subsection (B).

The declared purpose of the secondary boycott provisions of the Act is to limit the area of an industrial dispute in order to confine its effects, as nearly as possible, to the parties immediately involved and to prevent the extension of the dispute to employees and employers having no direct relation to it.¹² As the Board and the Courts have repeatedly

¹² See, e.g., S. Rep. No. 105, 80th Cong., 1st Sess. (1947), pp. 8, 22, 54, I Legislative History of the Labor-Management Relations Act of 1947 (G.P.O., 1948) 414, 428, 460.

recognized, the secondary boycott provisions of the Act embody "the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary disputes and of shielding unoffending employers and others from controversies not their own." *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, 692 (1951); *Local 761, International Union of Electrical Workers v. N.L.R.B.*, 366 U.S. 667, 672 (1961); *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612, 620 (1967). The legislative objective was to "restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread and, as Congress evidently judged, dangerous practice of unions to widen that conflict: the coercion of neutral employers, themselves not concerned with a primary labor dispute, through the inducement of their employees to engage in strikes or concerted refusals to handle goods." *Local 1976, Carpenters (Sand, Door and Plywood Co.) v. N.L.R.B.*, 357 U.S. 94, 100 (1958).

Applying these well settled principles the Board reasonably found that the parties immediately involved in this case were WBAL and the Union; that the News American was in the position of an "unoffending employer;" and that the Union violated Section 8(b)(4)(B) when it widened that conflict by picketing the News American, which was "[itself] not concerned with a primary labor dispute."

Thus, the record amply supports the Trial Examiner's finding, adopted by the Board, that WBAL and the News American "each operated as separate, autonomous entities, free of control by Hearst in its day-to-day operations and its labor relations policies" (A. 166). The management of each medium has virtually complete autonomy over its broadcasting and publishing operations. For example, Publisher Collins establishes his own policies regarding news, editorials, production, advertising

and circulation. Each publisher and general manager exercises complete discretion in establishing his medium's labor policy. Each determines the size and composition of his staff, hires his own employees, and decides, subject to any limitation contained in a collective bargaining agreement between his division and a union representing its employees, which employees shall be promoted, disciplined, laid off or discharged. The management of each medium administers its own grievance procedure, formulates its own bargaining proposals, engages in separate collective bargaining, and determines for itself what concessions to make at the bargaining table.¹³ WBAL and the News American subscribe independently to news services of their own choosing (including Hearst services, if any), and pay for such services, as well as for the services of their respective employees, from separate payroll accounts on checks drawn in their respective names. At their discretion, WBAL and the News American determine which, if any, of Hearst's fringe benefits they will offer to their own employees. In short, these enterprises have all the essential attributes of separate employer status.¹⁴

Moreover, the nature of the relationship between WBAL and the News American, and their actions during the events in this case, plainly show that the News American was in every sense a "neutral" with respect to the dispute between WBAL and the Union. Not only do the

¹³ The record is clear that no control has been exercised by Hearst through D. L. Provost; or any other individual, over contract negotiations or any other aspect of WBAL's labor relations, since 1966, when Hearst dissolved its New York Radio and Television Division and granted complete autonomy to its radio and television stations. It is also clear from the record that no such control was ever exercised over Hearst's newspaper divisions such as the News American.

¹⁴ Their only daily contact is through a direct news line which permits them to dispatch their own reporters to the scene of fast-breaking local news events. In addition, WBAL identifies itself as the News American station. But these factors hardly detract from the conclusion that each division is operated as an independent employing entity.

general managers of WBAL have final authority for management on all bargaining issues, but the record shows that it was they who precipitated the strike in this case by refusing to meet the Union's demands and insisting that separate contracts be negotiated for its radio and television employees (A. 12-13). It was the management of WBAL which decided to stand firm in the face of the Union's strike pressure. It neither sought nor received any advice or direction from Hearst during the current labor dispute; and News American officials in no way participated in the events leading to the strike. So far as appears from the record, the News American offered no economic assistance of any kind to WBAL. No interchange of employees ordinarily occurs between the two media,¹⁵ *supra*, pp. 6-7, and there is no evidence that any occurred during the strike. The management of the News American has no direct economic interest in resolving the dispute and has no power to meet the Union's demands. Indeed, the relationship between WBAL and the News American is characterized by competition rather than cooperation. They compete with each other not only for the advertising dollar in the Baltimore community, but also for primacy in reporting the news.¹⁶ There is no evidence that News American officials ever requested that Hearst officials in New York intervene in the dispute; indeed, the record clearly indicates that there has been no contact between Hearst and WBAL concerning the strike (A. 13). In short, this was WBAL's labor dispute, and the News

¹⁵ News American reporters appear on WBAL shows, but the financial terms are worked out between the reporter himself and WBAL, just as if WBAL and News American had no corporate affiliation. The same is true with respect to any WBAL personnel who may write a column for the News American.

¹⁶ Since WBAL and the News American are in these respects competitors, a prolongation of the work stoppage at WBAL may even have worked to the advantage of News American.

American and its employees were strangers to it — true neutrals within the meaning of Section 8(b)(4).¹⁷

- B. Common ownership by Hearst does not deprive the News American of the protection of Section 8(b)(4), because Hearst exercises no actual or active control of the day-to-day operations or labor policies of its broadcast and newspaper enterprises.**

Although WBAL and the News American, as autonomous divisions of the same corporate owner, are subject to the potential or ultimate control of Hearst officials in New York, this fact was properly found to be without legal significance. Potential control necessarily exists when two employing enterprises are commonly owned; yet it is settled law that common ownership of a "primary" and "secondary" employer does not itself cause the latter to lose its protected status. As this Court has emphasized, the Board and the Courts "have consistently and repeatedly held that common ownership alone does not suffice for this purpose. There must be something more in the form of common control, as it is usually phrased, denoting an actual, as distinct from merely a potential, integration of operations and management policies. Two business enterprises, although commonly owned, do not for that reason alone become so allied with each other as to lift the congressional ban upon the extension of labor strife from the one to the other." *Miami Newspaper*

¹⁷ During the course of the Congressional debates on Taft-Hartley, Senator Taft, in explaining what he meant by "a third person who is *wholly unconcerned* in the disagreement between an employer and his employees," for whose protection Section 8(b)(4)(B) was enacted, stated: "There is no reason that I can see why we should make it lawful for persons to incite workers to strike *when they are perfectly satisfied with their conditions* (emphasis added). 93 Cong. Rec. 4198, II Leg. Hist. (1947) 1106. This observation is plainly applicable to the case at bar.

Printing Pressmen's Local 46 v. N.L.R.B. (Knight Newspapers, Inc.), 116 App. D.C. 192, 322 F.2d 405, 409 (1963). Accord: *J. G. Roy & Sons Co. v. N.L.R.B.*, 251 F.2d 771 (C.A. 1, 1958); *Bachman Machine Co. v. N.L.R.B.*, 266 F.2d 599 (C.A. 8, 1959); *San Francisco-Oakland Newspaper Guild v. Kennedy*, 412 F.2d 541 (C.A. 9, 1969); *Penello v. American Federation of Television and Radio Artists*, 291 F. Supp. 409 (1968); *Los Angeles Newspaper Guild, Local 69, et al. (San Francisco Examiner, Division of Hearst Corporation)*, *supra*, 185 NLRB No 25; *Amalgamated Lithographers of America (Miami Post Co.)*, 130 NLRB 968, 973 (1961); *Drivers, Chauffeurs and Helpers Local 639, etc. (Poole's Warehousing, Inc.)*, 158 NLRB 1281 (1966). Cf. *International Brotherhood of Teamsters, etc., Local 179, etc. (Alexander Warehouse & Sales Co.)*, 128 NLRB 916 (1960).

The propriety of this test is, we submit, readily demonstrable, for if the circumstance of common ownership were enough to render separate employing enterprises "allies" and thus to justify the enlargement of the area of industrial conflict, a situation would be created whereby distant and diverse enterprises could be embroiled in labor disputes not of their own making, disputes which they would be powerless to resolve. The case at bar provides a pointed example. According to the Union, its labor dispute with the WBAL would warrant its picketing not only that station but three others — in Pittsburgh, Milwaukee and Puerto Rico, as well as newspapers in Seattle, San Francisco, Los Angeles, San Antonio, Boston and Albany — merely because of common ownership. Indeed, if controlling weight were assigned to the fact of common ownership, none of the far-flung Hearst enterprises — even those with no connection with the newspaper or broadcasting industries, such as its ranches and timberlands, its movie-making enterprise, its real estate investment operation — would be immune from a possibly crippling economic attack by the Union

in this case. These consequences, far from effectuating the policies of the Act, would manifestly do them violence.¹⁸

To be sure, in most of the foregoing cases the issue was whether several affiliated corporate enterprises were sufficiently free of common actual control so as to entitle them to the protection of Section 8(b)(4). As the Board held, however (A. 162), there is no sound basis for distinguishing between enterprises operated as unincorporated divisions and those operated as corporate subsidiaries, where, in each case, potential control is reserved to the corporate parent or home office but is not exercised in fact. Although a divisional corporate structure may facilitate the exercise of actual control over management policies, it plainly does not follow, as the operation of the Hearst Corporation readily illustrates, that such control is actually or necessarily exercised where enterprises share the same corporate umbrella, particularly where the business undertakings are as vast in scope and diverse in nature as Hearst's. As the Trial Examiner found in the instant case (A. 161):

"It is difficult to believe that a three-man Hearst hierarchy could feasibly and effectively control from New

¹⁸ The Court's recent decision in *Carpet, Linoleum, etc., Layers Local No. 419 v. N.L.R.B. (Sears, Roebuck & Company)*, 429 F.2d 747, App. D.C. , (1970), does not depart from, but in substance reaffirms, the actual control test, citing its prior decision in *Miami Pressmen* for the proposition that: "Various criteria of a single economic enterprise, such as common ownership and control, overlapping of management functions, common control over labor policies, as well as integration of business operations, help to determine whether there is in legal contemplation a 'single employer.'" 429 F.2d at 752. Remanding the case to the Board, this Court held that the Board may have erred in according controlling weight to the fact that the primary employers in that case — installers of Sears floor covering — stood in the relationship of independent contractors to Sears, the alleged neutral. This Court observed that the "relationship between Sears and the installers might so resemble that of employer and employee that a labor dispute with the installers could justifiably include Sears" — an observation which plainly has no application to the relationship between News American and the striking WBAL employees.

York City the day-to-day operations of some 20 to 30 divisions of a widely diversified nature, situated throughout the country. Practical and sound economic considerations alone would support Hearst President Berlin's statement that each division head is lodged with complete discretion and authority in operating his division . . . "

Accord: *Miami Printing Pressmen's Local 46 v. N.L.R.B. (Knight Newspapers, Inc.)*, *supra*, 322 F.2d at 409, 116 App. D.C. at 196.

Nor is it an answer to say that Hearst had only to incorporate its divisions to escape this kind of disruption. As the Trial Examiner observed (A. 164-165), "Such argument exalts form over substance and, if it were to prevail, would defeat the overall statutory objective to insulate employing entities from controversies not their own. As in other areas of industrial relations, the Board must look beyond 'organizational form' and evaluate the nature and status of the enterprise in the light of industrial reality. Cf. *N.L.R.B. v. Hearst Publications, Inc.*, 322 U.S. 11, 129". See also, *Chicago, M. & St. P. Ry. v. Minn. Civic Ass'n*, 247 U.S. 490, 501 (1918); *Bowater Steamship Co. v. Patterson*, 303 F.2d 369, 372 (C.A. 2, 1962).

Moreover, the economic relationship between Hearst and its media enterprises is at least as free from actual control as the relationship in *Miami Pressmen*, *supra*, 322 F.2d 405, 116 App. D.C. 192, where Knight Newspapers, Inc. published the Detroit Free Press and through a wholly-owned subsidiary also published the Miami Herald. As this Court's opinion indicates, James Knight, a vice-president and one of the principal stockholders of Knight, a family-owned company, also served as general manager of the Miami Herald, and the two corporations "have a number of common officers and directors, as witness the fact that John Knight is president and a director of both, and Clara and James Knight serve on

both boards as directors." 322 F.2d at 407, 116 App. D.C. at 194. The Board held, however, that "notwithstanding the closely held nature of the two corporations and the potentiality of integrated operations under common control that does exist, the Detroit Free Press and the Miami Herald are operated independently of each other as separate autonomous newspaper enterprises" (138 NLRB 1346, 1347-1348). Thus, although the Board found that John Knight, president of both Knight Newspapers and Miami Herald, "may be consulted by [Free Press general manager] Weidler or James Knight in connection with problems concerning the operations of their newspapers," such consultation "appears to be in an advisory rather than executive capacity." 138 NLRB at 1347. Another Knight Newspapers officer, Vice-President Griner, participated in collective bargaining negotiations between the Miami Herald and the Union, but the Board concluded that in this role he "carried out, rather than shaped policy * * *" (*ibid.*). The Board attributed little weight to the fact that James Knight also served as vice-president of Knight Newspapers because, as the record showed, he "plays no active role in its operations."

As this Court observed, sustaining the Board's finding that the union in that case violated Section 8(b)(4) of the Act by picketing the Free Press in support of its dispute with the Miami Herald, a "pattern of independence persists" in the "field of labor relations", in that "[p]rimary responsibility in this area is vested in, and exercised by, James Knight for the Herald and Weidler for the Free Press, and there is no coordination of policy between them." Contract negotiations were conducted by Miami Herald officials who "consulted no one but their subordinates with respect to the formulation of the management position", and "[n]o instructions have ever been issued by John Knight, or by Knight Newspapers, Inc. with respect to the labor policies to be followed by either the Free Press or the Herald."

All of these indicia of autonomy are present in the instant case (*supra*, pp. 12-14). There is, we submit, no more justification for permitting the Union to embroil the News American in its dispute with WBAL than there was in *Miami Pressmen* for permitting the Miami union to picket the Detroit Free Press in its dispute with the Miami Herald. Although the News American utilizes Hearst news services to a greater degree than the Knight newspapers used Knight for such services, the Hearst papers have no obligation to accept any of these services and in fact have declined to use some of them. As shown *supra*, p. 5, most of these services are also made available to non-Hearst newspapers. Hearst papers, including the News American, utilize non-Hearst news services and non-Hearst sources are available if needed for most if not all services offered by Hearst. In these circumstances the use of Hearst services clearly does not result to any significant degree in "mutual dependence" (*Miami Pressmen*, *supra*, 322 F.2d at 409) between Hearst and the News American, and the Board properly found this evidence to be of little weight.

The Union contends that the Board's holding places it at an unfair disadvantage because, while it is forbidden to use economic pressure against the News American, Hearst is free to use resources derived from the News American's operations or from the operations of its other divisions to combat a strike against WBAL. Since there was no evidence that Hearst actually rendered such assistance or had ever done so in the past, this contention amounts to no more than a restatement of the argument, which the Board and courts have consistently rejected, that enterprises which are commonly owned are necessarily "allies" for purposes of Section 8(b)(4). Thus, if two or more enterprises are commonly owned, the possibility always exists that such resources will be used to rescue a beleaguered member of the corporate family. In an economy where

conglomerate empires continue to proliferate,¹⁹ often bringing together enterprises which have nothing in common, the implications of permitting picketing of any and all enterprises whose profits inure to the benefit of a common owner are far-reaching indeed. This is not to say, of course, that a common owner is necessarily free to intervene with financial strike assistance and retain on behalf of its other enterprises their statutory immunity from economic pressures; it is only to say that until such intervention materializes or until the neutrality of a sister enterprise is compromised in some other manner, it is the manifest intent of Congress that the dispute be confined to the immediate participants.²⁰

In sum, as the District Court observed, in finding that the Regional Director had reasonable cause to believe that the Union's conduct in this case violated Section 8(b)(4):

WBAL is the employer of the striking AFTRA employees and is primarily involved in the labor dispute. The News-American in a practical and real sense is not involved in the dispute between WBAL and AFTRA. When the Union placed its pickets at the site of the News-American, its aim was to place indirect or secondary pressure on WBAL. It is the admitted aim of §8(b)(4) to circumscribe such indirect pressure. This court does not feel that the tenuous thread of legal oneness, nor a potential accountability

¹⁹ See, e.g., Burck, *"The Merger Movement Rides High"*, 79 *Fortune* 78, 81, February 1969; Louis, *Ten Conglomerates and How They Grew*, 79 *Fortune*, 152-153, May 15, 1969; MacDonald, *The Conglomerate: Corporate Octopus*, 76 *The American Federationist*, 17-23, February 1969.

²⁰ Indeed, in *Miami Pressmen* itself, the Board rejected essentially the same contention, that a corporation cannot appropriately be said to be "neutral" with respect to a labor dispute of a corporation which it wholly owns and from whose operations, if profitable, it would gain * * * 138 NLRB at 1352 (Trial Examiner's Decision).

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In sum, as the District Court observed, in finding that the Regional Director had reasonable cause to believe that the Union's conduct in this case violated Section 8(b)(4):

WBAL is the employer of the striking AFTRA employees and is primarily involved in the labor dispute. The News-American in a practical and real sense is not involved in the dispute between WBAL and AFTRA. When the Union placed its pickets at the site of the News-American, its aim was to place indirect or secondary pressure on WBAL. It is the admitted aim of §8(b)(4) to circumscribe such indirect pressure. This court does not feel that the tenuous thread of legal oneness, nor a potential accountability

¹⁹ See, e.g., Burck, *"The Merger Movement Rides High"*, 79 *Fortune* 78, 81, February 1969; Louis, *Ten Conglomerates and How They Grew*, 79 *Fortune*, 152-153, May 15, 1969; MacDonald, *The Conglomerate: Corporate Octopus*, 76 *The American Federationist*, 17-23, February 1969.

²⁰ Indeed, in *Miami Pressmen* itself, the Board rejected essentially the same contention, that a corporation cannot appropriately be said to be "neutral" with respect to a labor dispute of a corporation which it wholly owns and from whose operations, if profitable, it would gain * * * 138 NLRB at 1352 (Trial Examiner's Decision).

to Hearst, are sufficient to deny the News-American the protections of the Act.

Penello v. American Fed. of T & R Artists, Wash-Balt. Local, supra, 291 F. Supp. at 413. For all of the foregoing reasons, the Board properly found that despite its ownership by the Hearst Corporation, the News American was a neutral employer entitled to the statutory protection against secondary picketing.

- C. There is no support for the Union's contention that the economic "separateness" of two employing enterprises is legally irrelevant where the enterprises are held by the parent corporation as unincorporated divisions rather than incorporated subsidiaries.

The Union asserts that as a matter of law an unincorporated division cannot be treated as a neutral person within the meaning of Section 8(b) (4) of the Act. This contention, of course, amounts to saying that the Board must blind itself to the fact that two or more enterprises may operate with virtually complete autonomy within a single corporate framework, and that the Union, in furtherance of a dispute with WBAL in Baltimore, is free to seek out Hearst operations across the nation and disrupt business on a vast scale, inducing strikes at enterprises which have no ties to WBAL and which enjoy all the attributes of separate employer status and true "neutrality" excepting only their common ownership by the Hearst Corporation.

This contention — that the smallest corporate unit to which protection may be extended under Section 8(b)(4) is the corporation itself — overlooks the fact that the statute affords protection not only to corporations and individuals but, generically, to "persons" as well. Thus, as the Supreme Court has observed, the "scope of the work 'person' depend[s]

on its 'legislative environment'". *U.S. v. Shirey*, 359 U.S. 255, 258, n. 2 (1959), citing to *Georgia v. Evans*, 316 U.S. 159 (1942). "If the purpose of a statute is such as to dictate the inclusion of a particular body within its scope then the statute is generally so interpreted." *Shirey, supra*, 359 U.S. at 257, n. 2. There is no dispute as to the purpose underlying Section 8(b)(4): Congress made a "legislative judgment that it was not in the public interest for one business enterprise to be halted because of the unrelated problems of another [footnote omitted]" *Miami Newspaper Pressmen's Local 46 v. N.L.R.B.*, *supra*, 116 App. D.C. at 196, 322 F.2d at 409. As we have shown, WBAL and News American have been clothed with the essential attributes of separate employer status; News American did not participate in WBAL's dispute with the Union; and Hearst at all times observed its policy of noninterference in the operations of its broadcast and newspaper enterprises. As the Board held (A. 162), to deprive News American of the protection of the Act under these circumstances, on the technical ground that it operates as a division rather than an incorporated subsidiary of Hearst, would plainly defeat this legislative purpose.

The Union asserts, however (Br. p. 5), that since the definition of "persons" found in Section 2(1) of the Act does not specifically include corporate divisions, Congress must have intended to exclude them from the protection of Section 8(b)(4); and that, in any event, the News American cannot be treated as a "person" within the contemplation of the Act because a division is not a recognized "legal entity" or "juristic" person. As we show below, the Unions' first contention is plainly wrong as a matter of statutory construction; and its second contention — that "person" means "legal entity" — not only has been rejected by the Supreme Court in an analogous context, but also rests upon the mistaken premise that corporate divisions have not been recognized in law as juristic persons.

Thus, Section 2(1) of the Act states that the "term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations * * * or receivers" (emphasis added). Contrary to the Union's contention (Br. pp. 5-7), the courts have long recognized that "the word 'includes' is usually a term of enlargement, and not of limitation . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated . . ." *Argosy Limited v. Hennigan*, 404 F. 2d 14 (C.A. 5, 1968). Accord: *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95 (1941); *United States v. Gertz*, 249 F. 2d 662 (C.A. 9, 1957). Construing a similar statutory provision, the Ninth Circuit observed, "The term 'person' does include [certain enumerated categories] but certainly does not exclude all others. Its scope is illustrated rather than qualified by the specified examples". *U.S. v. Graham*, 309 F. 2d 210, 212 (1962).

This settled principle of statutory construction has been followed by the Board and the Courts in cases construing Section 2(1) of the Act. It has long been held, for example, that political subdivisions, such as counties and municipalities, are "persons" within the meaning of the Section 8(b)(4); neither the Board nor the courts have accepted the contention that they are not entitled to the protection of Section 8(b)(4) because political subdivisions are not specifically included in Section 2(1)'s definition of "person". See *Plumbers Union, Local 298 v. County of Door*, 359 U.S. 354 (1959); *Local Union No. 313, IBEW (Peter D. Furness Electric Co.)*, 117 NLRB 437 (1957), enforced 254 F. 2d 221 (C.A. 3, 1958); *New York Typographical Union No. 6 (Garvin Press)*, 141 NLRB 1209, 1212, n. 2 (1963).²¹

²¹ Compare, *Teamsters, Local 25 v. New York, N. H. & H. Ry. Co.*, 350 U.S. 155, 160 (1955) ("Since railroads are not excluded from the Act's definition of 'person' they are entitled to Board protection from the kind of unfair labor practices proscribed by Section 8(b)(4) * * *").

By the same token, a corporate division operating as an autonomous enterprise cannot be excluded from coverage of the Act for this reason alone. Rather, where a corporate division functions with the kind of independence enjoyed by the News American, and shares, as does the News American, the characteristics of a separate employing enterprise, the fact that the division is not separately incorporated becomes largely happenstance, and need not be given conclusive legal effect under a statute which protects "persons" and which defines persons in a manner which merely illustrates rather than qualifies the scope of coverage.

In short, the "term 'person' as used in the act has been liberally construed." *Penello v. American Federation, etc., supra*, 291 F. Supp. at 414. The caselaw, the legislative history, and the statute itself all support the view that it is the economic realities which must govern in each case; that the Board must look behind artificial "legal" persons and ignore corporate structures if necessary to determine the true employer. Indeed, this principle has repeatedly been recognized and applied by the Board and the Courts in Section 8(b)(4) cases involving two or more corporate enterprises. See cases cited *supra*, p. 16.

Although treating separate corporations as a single entity for purposes of Section 8(b)(4) is not the same as treating different parts of a single corporation as separate entities, the principles which dictate that corporate form be disregarded in the one situation apply with equal force in the other. For if, where a claim of neutrality on behalf of an enterprise is based upon its legal separateness as a matter of corporate law, the Board is free to look behind the corporate form and determine if the enterprise is truly neutral with respect to a labor dispute, there is no reason in logic or policy why the Board cannot also look to economic realities when the claim is made that the corporate structure of two or

more enterprises *precludes* a finding of separateness or neutrality under Section 8(b)(4). As the Board observed in the companion *Los Angeles Newspaper Guild* case (*supra*, 185 NLRB No. 25, slip op. p. 6), "where, as here, a virtually autonomous division of a corporation has all the relevant attributes of a person excepting only separate incorporation, logic dictates that it too be considered a person."

The Union's further contention (Br. 10) that the Examiner is not a "person" because a corporate division is not a recognized "legal entity", must fail for at least two reasons. Initially, as the Board pointed out in its decision in the companion case (185 NLRB No. 25, slip op. p. 7, n. 8), unincorporated divisions of corporations have repeatedly been recognized as "persons" by the Board. On many occasions, the Board has entertained complaints and issued remedial orders against divisions of corporations, pursuant to Section 10 of the Act, which authorizes the Board to prevent any "person" from engaging in unfair labor practices by issuing a complaint and order against such "person". See, e.g., *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958). To the extent it is relevant, these cases indicate that corporate divisions have indeed had a "juristic" existence in Board law and practice.

In any event, as the Supreme Court has observed, the test is whether the particular entity or "body" (*U.S. v. Shirey, supra*, 359 U.S. at 257-258) is entitled to legal cognizance as a "person" for purposes of the statute under consideration, not whether it constitutes a juristic person for other purposes. The Court held in *Shirey*, for example, that the Republican Party is a "person" within the meaning of a statute prohibiting certain payments to any "person, firm, or corporation," notwithstanding the fact, expressly recognized by the Court, that "the Republican Party is not a legal entity." 359 U.S. at 257. Similarly, in the instant case, the Board's finding that Section 8(b)(4) protection extends to

the News American clearly furthers the legislative objective of confining labor disputes to the immediate parties involved. Although linking WBAL to the News American through Hearst may be appropriate in other legal contexts, it is not justified in this case, where the secondary boycott provisions of the Act have been invoked and the evidence shows that the News American is about as separate from WBAL as any two commonly-owned enterprises could possibly be.

Finally, these arguments, that a corporate division is necessarily and for all purposes outside the purview of the word "person", are particularly inappropriate in the instant case because they ignore the origins of Section 8(b)(4)(B). Thus, prior to 1959, the Taft-Hartley Act afforded full protection against secondary strikes to "employers" rather than "persons". The definition of "employer" embodied in Section 2(2) of the Act contains no language which could conceivably have been interpreted as prohibiting the Board from concluding that a corporate division with the basic attributes of separate employer status constituted an "employer" within the meaning of Section 8(b)(4).²² Indeed, this principle of separateness was implicitly recognized in *Alexander Warehouse*,²³ a case which, although decided after the 1959 amendments, actually arose under the pre-1959 statute. There, the union, in furtherance of a labor dispute at a warehouse owned by a corporation, picketed two other warehouses maintained by that corporation in other cities. The Board

²² The dictionary definition of "employer" includes "the owner of an enterprise that employs personnel for wages" and "such an enterprise itself." *Merriam-Webster New International Dictionary*, 3rd ed., 1961.

²³ *International Brotherhood of Teamsters, etc., Local 179, etc. (Alexander Warehouse & Sales Co.)*, *supra*, 128 NLRB 916.

dismissed the Section 8(b)(4) charges, not on the ground that the corporation was a single legal entity operating three warehouses which were not cognizable as separate legal entities, but on the ground that the two allegedly neutral warehouses were sufficiently "allied" with the third, by virtue of common general supervision, central purchases, pooled shipments, and interchange of employees, to constitute a single integrated enterprise.²⁴

The Union concedes that the purpose of the 1959 amendment was to extend, not limit, the coverage of Section 8(b)(4), in order to insure that certain types of enterprises, such as railroads, which were specifically excluded from the definition of "employer" under Section 2(2), would enjoy the full protection of Section 8(b)(4) against secondary pressures. Indeed, it would seem that Congress chose the generic term "person" for the very purpose of anticipating the kind of artificial defenses raised by the Union in this case. For, by expanding the coverage of Section 8(b)(4), it was Congress' clear intention to protect entities which function as employers in fact, whether or not they function as such within the meaning of Section 2(2) of the Act. As a leading exponent of the legislation, Senator Goldwater, explained, "by substituting the term 'person' for the term 'employer', it broadens the scope of the latter term to its full dictionary meaning instead of the limited meaning which it has under the definition of 'employer' in Taft-Hartley." II Leg. Hist. 59, p. 1957.

It would, in short, be patently inappropriate to decide this case on the basis of whether a corporate division is a "legal entity" for some

²⁴ As the Board pointed out in the companion case (185 NLRB No. 25, slip op. p. 6), *Alexander Warehouse* was a case where "the day-to-day operations of each warehouse, including their labor relations policies, were subject to the corporation's actual control, and were operated in the same manner as allies".

unrelated purpose, or whether it falls within one of the categories specifically enumerated in Section 2(1) of the Act. As the Board observed in the companion case, "under the principles established in *Alexander Warehouse* and *Knight Newspapers*, each of these divisions would be treated as a separate employer, both before and after the 1959 amendment. Not to treat them as separate persons would result in widening, instead of narrowing, labor disputes and contracting instead of expanding the coverage of Section 8(b)(4)(B) contrary to the intent of Congress * * *" (185 NLRB No. 25, slip op. p. 7). Accordingly, the Board properly found no merit to the contention that a subdivision of a corporation cannot as a matter of law constitute a "person" within the meaning of Section 8 (b)(4) of the Act.

* * *

In sum, the record in this case shows that the News American has an identity of its own as an autonomous newspaper enterprise. As the Trial Examiner concluded (A. 159-160):

That the two divisions, vis-a-vis each other, constitute separate employing entities, independent of each other, is established by the fact that they are engaged in two distinct and separate aspects of communications media; that they establish their own advertising rates and service charges; that they are in daily competition with each other for the advertising dollar; that they handle all matters of employment (hiring, firing, employee benefits, etc.) and effectuate labor relations policies and administration (e.g., collective bargaining agreements and matters arising thereunder) completely independent of each other; that they maintain separate financial systems and separate bank accounts from which they pay all salaries and wages; and that they pay and collect their own bills

For all of the foregoing reasons, the Board reasonably found that the News American was a neutral "person" within the meaning of Section 8(b)(4). It follows that the Union's picketing of the News American premises violated Section 8(b)(4)(i) and (ii)(B) of the Act. See *Los Angeles Newspaper Guild Local 69, et. al.*, 185 NLRB No. 25.²⁵

²⁵ In *Los Angeles Newspaper Guild*, the Board held that the San Francisco Examiner, a Hearst division, could not lawfully be picketed in support of a dispute between various Los Angeles unions and the Los Angeles Herald-Examiner, another Hearst division. This case is pending enforcement in the Ninth Circuit, No. 26,534.

CONCLUSION

It is respectfully submitted that a judgment should issue denying the petition to review and enforcing the Board's order in full.²⁶

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DOMINICK L. MANOLI,
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²⁶ The Union appears to contend (Br. pp. 18-19) that since its object in picketing the News American was not to force the News American to cease doing business with WBAL, it cannot be held to have violated Section 8(b)(4) of the Act. This contention — that 8(b)(4) is directed at "interference with the business relationships between the primary and secondary employers only" — was squarely rejected by this Court in the *Miami Pressmen* case, *supra*, 322 F. 2d at 410, 116 App. D.C. at 197:

Although it is frequently true that the object of secondary picketing is to obstruct dealings with the primary employer, Congress did not so limit its language. And a moment's reflection establishes that such a limitation would not have been consonant with the central legislative purpose. That purpose was to confine labor conflicts to the employer in whose labor relations the conflict had arisen, and to wall off the pressures generated by that conflict from unallied employers. If one of the latter with impunity could be forced to suspend its business relations with all persons other than the primary employer, the evil which Congress sought to get at would be complete. Many secondary employers would have no occasion to have commercial intercourse with the primary employer. Is it supposed that Congress intended that their businesses could be stopped by secondary pressures simply because of this circumstance? We think not

Since an object of the Unions conduct in this case was plainly to force a cessation of business between News American and its customers and suppliers, the Union's conduct was unlawful under this Court's holding in *Miami Pressmen*. Cf. *N.L.R.B. v. Local 825, IUOE*, 400 U.S. 297 (1971).

GENERAL COUNSEL'S EXHIBIT NUMBER 3(b)



The News American

The Award-Winning Newspaper:

Winner of the 1965 Albert Lasker Medical Journalism Award and the 1965 American Medical Association Award for distinguished reporting in the medical field.

The only newspaper in Maryland with all the great news and photo services: Associated Press, United Press International, AP Wirephoto, UPI Telephoto, Hearst Headline Service, Chicago Daily News Wire Service, London Daily Express Wire Service.

Maryland's Most Widely Read Daily

Established in 1773 as The Maryland Journal and Baltimore Advertiser

2H ★ Sunday, October 20, 1968

The Case for Nixon

DURING THE PRESIDENTIAL campaign four years ago this newspaper urged the election of Lyndon B. Johnson and Hubert H. Humphrey. It now believes American voters can best serve their country by electing Richard M. Nixon and Spiro T. Agnew.

The country needs a change of leadership. It cannot be provided by the Democratic candidates. It is possible only by electing either Nixon or George Wallace. The latter would be disastrous.

New leadership is essential because events in the nation have gotten beyond the reasonable control of its present leaders.

The Vietnamese entanglement was not started by the present leaders; it was inherited. The Johnson administration, however, permitted it to develop into full-scale, though undeclared, war. Time and again, as escalation progressed, the administration predicted military victory, which now seems as far removed as ever. Ending the war now seems to be a matter controlled by the enemy, not the United States.

Crime has grown to terrifying proportions. Decent citizens cannot feel safe on the streets or in their homes. Controlling it, even diminishing it, seems beyond the capacity of the incumbent administration.

The racial issue has moved toward polarization, not agreement. Numerous civil rights laws have been passed, billions have been spent, to help end the disadvantages under which Negroes live in America. To a degree, these actions have served their primary purpose. But the tensions between the two races, the divisiveness in American society, remain at least as acute as ever. Achievement of unity in this sphere seems beyond the administration's control.

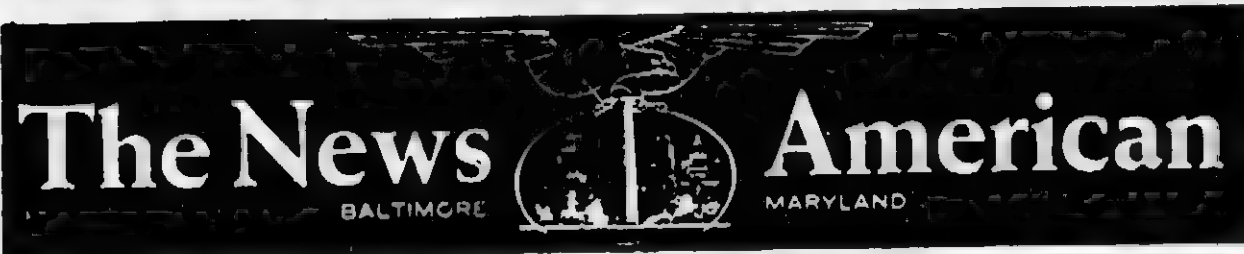
The fight against poverty also produced many laws and vast expenditures during the last four years. Its implementation, however, has produced a sprawling assortment of governmental activities, many of which are wasteful and inefficient. Bringing order and effectiveness to the worthy effort is apparently to an achievement beyond the administration's capability.

For these and other reasons, a change is needed. Richard Nixon will provide it. His experience as Dwight Eisenhower's vice-president has been enriched by eight years of intensive preparation for his present candidacy. He has the ability and the will to grapple with problems; to bring order into the confusions which now beset the nation.

His choice of Maryland's Governor Spiro T. Agnew as his running mate was, of course, pleasing to our state's local pride. This is not the chief reason, however, why Marylanders should join other Americans in supporting him. Agnew is a man who learns quickly. Given vice-presidential responsibility, his acute mind and his intense energy provide assurance that he will bear it with distinction.

Hubert Humphrey is a man of ability and good intentions and long experience. By nature and association, however, he is among those who have let events get beyond control. Now, stronger hands should hold the helm of the ship of state.

GENERAL COUNSEL'S EXHIBIT NUMBER 4(a)



Sunday, November 8, 1968

1968 Year—No. 12

Editor's Report

Hubert Humphrey Is My Choice

By WILLIAM RANDOLPH HEARST, JR.
Editor-In-Chief, The Hearst Newspapers

NEW YORK — In most presidential elections since I've been writing this column I haven't been bashful about adding my own views to the position taken by our papers.



W. R. HEARST JR.

In the past that position has been determined by a consensus of the views of the publishers and editors and then all sticking with the majority view.

This is a procedure followed by the Scripps-Howard Newspapers while Sam Newhouse and the Gannett newspapers generally let the feelings—particularly if strong enough—of the individual papers determine their positions.

This year, as I have mentioned here before, the two leading candidates—Vice President Hubert H. Humphrey and ex-Vice President Richard M. Nixon—are not only personal friends of mine but both are knowledgeable,

Turn to Page 5A, Column 1.

GENERAL COUNSEL'S EXHIBIT NUMBER 4(b)

Editor's Report**Humphrey Is My Choice**

Continued from Page 1A.

experienced men with years of most creditable public service behind them.

Even so, there was a considerable lack of agreement among our editors and publishers, so when it was suggested that our papers follow the Gannett-Newhouse method, I readily concurred.

A lot of readers and friends, however, seem to feel that I should make known my own personal preference although — Heaven knows — I have as much right as anybody else to pull the curtain behind me and vote in secrecy. Nevertheless, for whatever interest it might be to you, here is my Sunday-before-election thinking.

To begin with ex-Governor George Wallace is a candidate, and a lot of people do intend voting for him out of frustration or in protest over certain real or imaginary ills of our nation.

If you want to register an effective protest vote, instead of wasting it, you should make your views felt through your directly elected Representatives in Congress and the President will get the message.

The fact is, too, that Wallace has no chance of being elected, nor does he measure up to the tremendous demands of the Presidency. The only public record of him in a position of responsibility is as Governor of Alabama and that is a miserable one.

The thought of this little beetle-browed bully representing the United States of America in any council of world leaders staggers the imagination.

Now let's get on to the two men who DO have the qualifications to lead our nation—and I swear right off the bat that choosing between them has been one of the hardest things I've ever done.

Dick Nixon and Hubert Humphrey are both not only long-time personal friends. They are equally sincere, studious, responsible and thoroughly at home with the problems of government.

Both have served as United States Senators and both have been Vice Presidents of this nation. In addition both have traveled extensively and have met and had dealing with the leaders of the world.

On the basis of their personal accomplishments and experience, therefore, there is virtually no difference between the two men. Nor are there many basic differences between them in their stands on the most important campaign issues.

Both agree with President Johnson's views and actions regarding the Vietnam war. Both are pledged to fight vigorously against crime and lawlessness, and for social progress and economic stability. Even their farm programs are remarkably similar.

Where the two men differ in their positions is fundamentally one of degree and tone. And what this comes down to is the fundamental difference between the Republican and Democratic parties.

Thus in choosing between Dick Nixon and Hubert Humphrey it is imperative to consider the general political philosophies and traditions they represent. It is one of the few yardsticks by which a sound decision can be made.

In all probability you have already voted for either Nixon or Humphrey. If you cast a ballot for the one you supported Nixon and what he stands for. If you voted for Lyndon Johnson, the same applies for Humphrey. If you didn't vote for either of them you are just a born loser.

And what is the key contrast which influenced those votes? It is, broadly speaking, that the Republicans tend to be conservative while the Democrats tend toward the experimental.

But there is a lot more to it than that. I lunched recently with a very wealthy man who has given his life to public service. He said he was going to vote Democratic and he told me why.

The balance of his decision, he said, was tipped because he felt that the Democrats could be counted on to react to human problems with greater warmth and understanding—that they seem to CARE more for the plight of the poor and less fortunate than do the Republicans.

I was struck by what he said since his views came close to what I have concluded from my own experience. They also reflected the views of my father, who was a Democrat most of his life.

Now it is undeniable that the Democrats are not considered to be as fiscally responsible as the Republicans. It also is undeniably true they have increased the national debt to frightening proportions.

Yet just take a look around at how well off most of our people are. The fact is that today there are as many private boats as there used to be people in breadlines. You see tens of thousands of them every time you fly over our harbors and lakes.

Needless to say, anyone with a boat has probably got a car or two and probably is buying a house to live in when not accounting about. So when we think about the national debt being enormous we should not forget that national product growth is even more so.

Another gauge of our economic health I have learned to use is what other nations think of our currency. Granted that it has been inflated. But compared to any other country the dollar is as solid as a rock.

If our national debt worried the other countries of the world the value of our currency would be lower proportionately.

And so while a lot of people are seriously worried about the many programs the Democrats have undertaken, I happen to think their investment in America has been a good one. I also think most Americans think so too, no matter what they say.

I guess that makes it pretty clear then that the Democrats, in my book, deserve another four years in power. If they had been in for 12 years instead of the present eight, I think I would be for a change on general principles—but not now.

There are other reasons for my conclusion. For example it is no secret that I have been in sympathy with and admired what Lyndon Johnson has been trying to do for this country in a time of most difficult trials.

History will show that LBJ and his administration have done more to advance social progress while arresting the spread of Communism than any other. So I would be doing a real about face if I should advocate a break in continuity before the work is done.

Still another reason for advocating the Democratic cause on Tuesday is the quality of the men who are running for Vice President. I have nothing against Spiro Agnew except his lack of experience. Edmund Muskie, on the other hand, is clearly qualified to succeed to the Presidency should it become necessary.

And now, as my final motivation for making Tuesday's selection, I offer something which some people may think relatively trivial. It involves the essential personal differences I find between my two good friends.

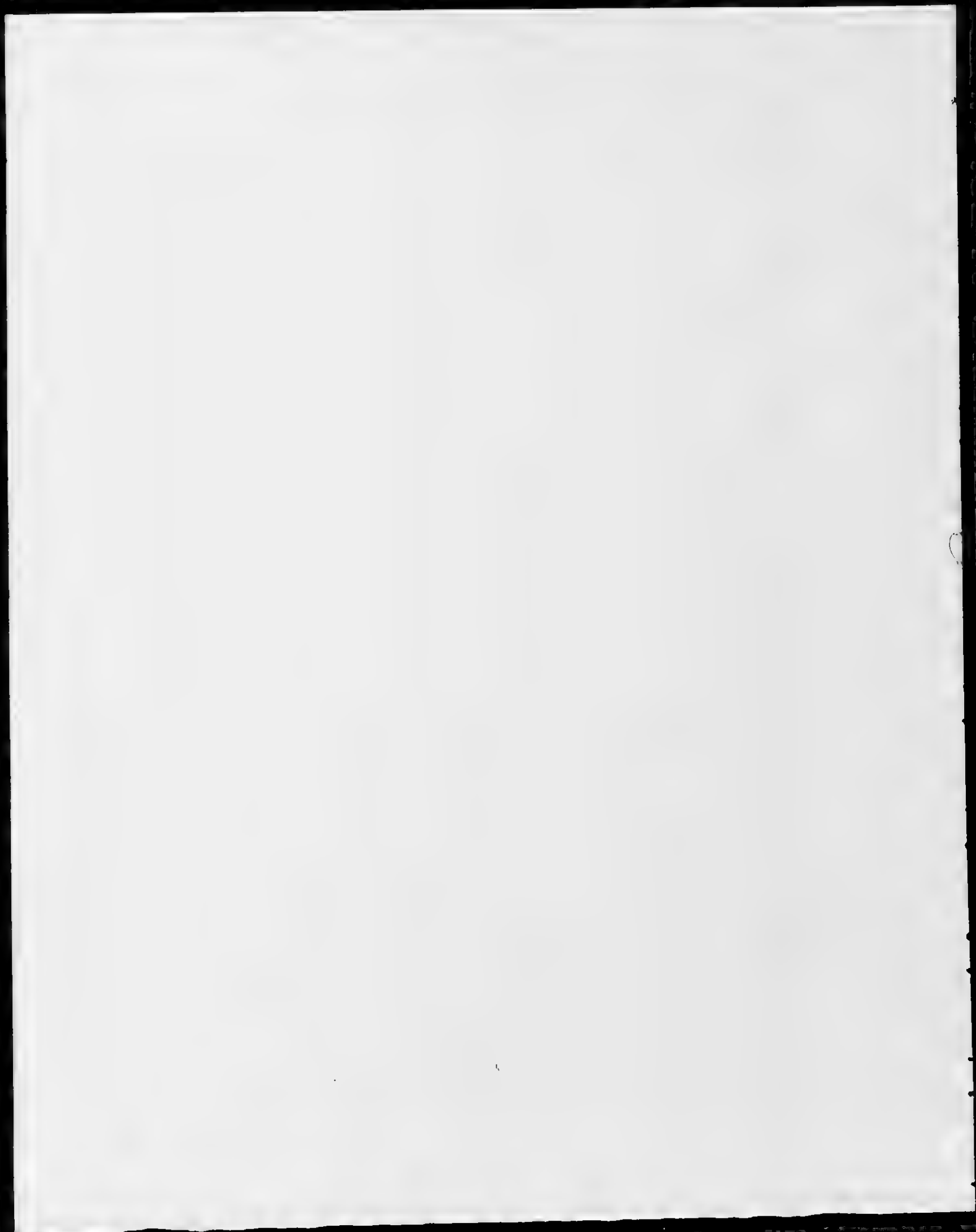
Knowing the two so well, I can say without contradiction that Hubert Humphrey's sense of humor is highly developed while Dick Nixon's is not. Both are equally serious when necessary but Dick, in private, is almost always serious too.

To me this is a very important consideration. Throughout my life I have found that men who can laugh readily are more responsive and understanding than those who set like a fugitive from Mount Rushmore.

Humor is more than a sign of a warm human being with a warm philosophy. It also is a safety valve which can sustain a man when the pressures become otherwise almost intolerable.

It was his warm sense of humor as much as anything else which sustained Abraham Lincoln in one of the most crucial periods of American history. I am convinced a sense of humor is equally essential to a modern day President in his frighteningly responsible job.

For all these reasons, if you are interested, I intend to vote on Tuesday for Hubert H. Humphrey.



FILED FEB 8 1971

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nathan J. Paulson
CLERK

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR REVIEW AND SET ASIDE AND CROSS-
APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF OF INTERVENOR,
BALTIMORE NEWS AMERICAN DIVISION,
THE HEARST CORPORATION

JAMES J. DOYLE, JR.,

RECEIVED

JOHN B. JASKE,

SHERBOW, SHEA & DOYLE,

FEB 6 1971 10 Light Street, 27th Floor,
Baltimore, Maryland 21202,

CLERK OF THE UNITED STATES COURT OF APPEALS
WILLIAM C. PATRICK,
Suite 1126, Woodward Building,
Washington, D. C. 20005,

Attorneys for Intervenor.

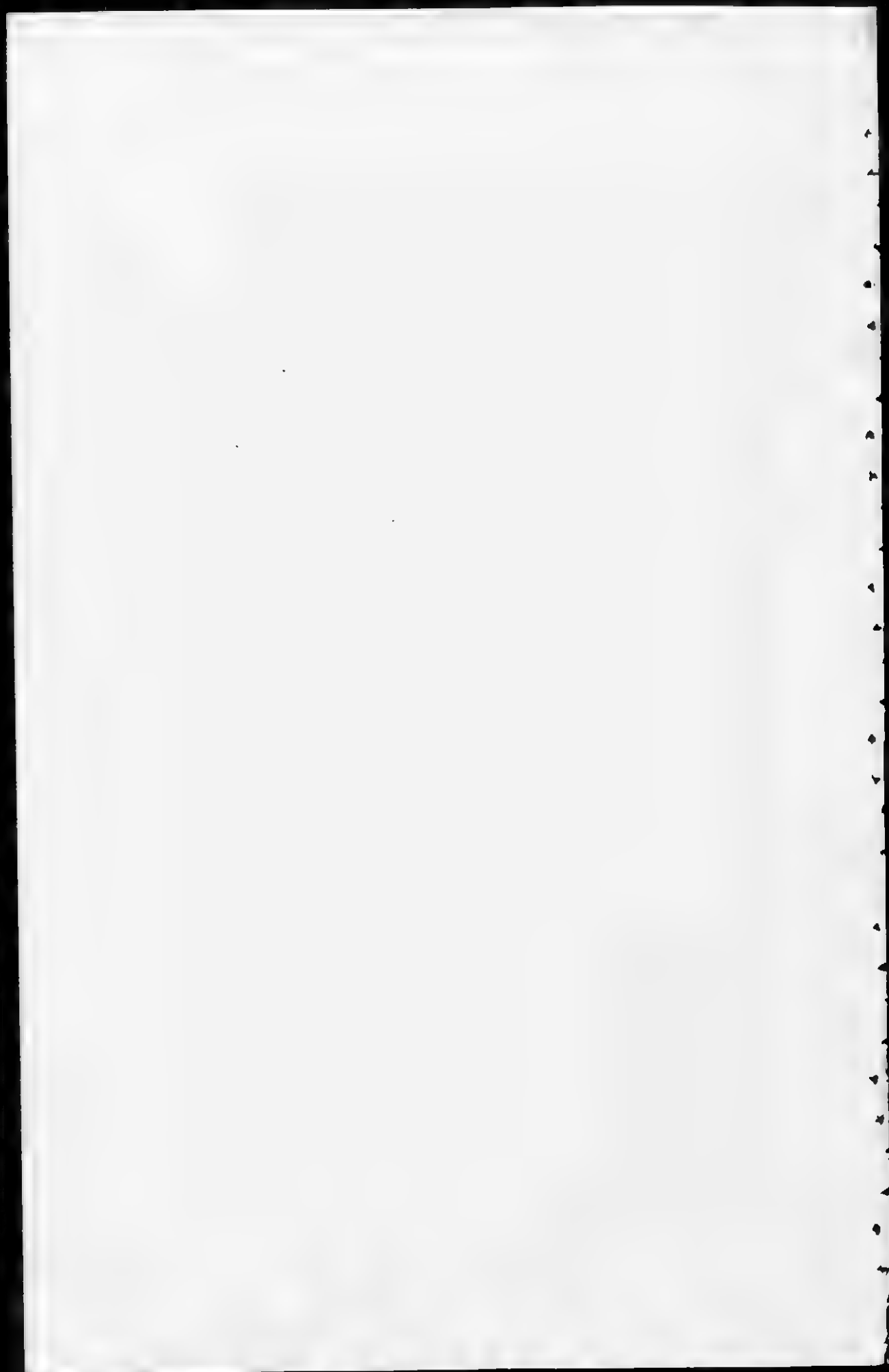


TABLE OF CONTENTS

	PAGE
ISSUE	1
REFERENCE TO RULINGS	2
STATEMENT OF THE CASE	2
ARGUMENT:	
A. Economic relations, not the sterile application of statutory language, determine rights under section 8(b)(4) of the Act	3
B. WBAL, and only WBAL, is the employer of the AFTRA members who picketed the News American	9
CONCLUSION	16

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American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184 (1921)	5
*Bachman Machine Company v. N.L.R.B., 266 F. 2d 599 (8th Cir. 1959)	6, 8, 13, 15
*J. G. Roy & Sons Co. v. N.L.R.B., 251 F. 2d 771 (1st Cir. 1958)	6
*Local No. 24, International Brotherhood of Team- sters, etc. v. N.L.R.B., 105 U.S. App. D.C. 271, 266 F 2d 675 (1959)	7
*Miami Newspaper Pressmen, Local 46 v. N.L.R.B., 116 U.S. App. D.C. 192, 322 F. 2d 405 (1963)	6, 12
*N.L.R.B. v. Denver Building and Construction Trades Council, 341 U.S. 675 (1951)	5, 9, 14

* Cases or authorities chiefly relied upon are marked by asterisks.

	PAGE
N.L.R.B. v Hearst Publications, Inc., 322 U.S. 111 (1944)	5
Poole's Warehousing, Inc., 158 NLRB 1281 (1966)	6, 12
*Roan-Anderson Company, 95 NLRB 1501 (1951)	6
Schauffler v. District 65, Retail, Wholesale and De- partment Store Union, 33 L.C. Par. 71,210 (E.D. Pa. 1957)	13
*United Brotherhood of Carpenters and Joiners, 118 NLRB 286 (1957), set aside and remanded, J. C. Roy & Sons Co., 251 F. 2d 771 (1st Cir. 1958)	8

Statutes

Labor-Management Relations Act, 1947, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 et seq.:	
Section 10(1)	2
Section 13	3
Sections 8(b)(4)(i) and (ii)(B)	4
Section 10(e)	5

Text

95 Congressional Record 8709 (1949)	8
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* Cases or authorities chiefly relied upon are marked by asterisks.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,641

AMERICAN FEDERATION OF TELEVISION AND
RADIO ARTISTS, WASHINGTON-BALTIMORE
LOCAL, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND SET ASIDE AND CROSS-
APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF OF INTERVENOR,
BALTIMORE NEWS AMERICAN DIVISION,
THE HEARST CORPORATION

ISSUE

Whether the picketing of two divisions of a corporation constitutes illegal secondary activity in violation of Sections 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 744, 29 U.S.C. Sec. 158(b)(4) hereinafter referred to as the Act).

The Pending Case has not been before this Court previously.

REFERENCE TO RULINGS

The Decision and Order presented to this Court for review is American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO and Baltimore News American Division, The Hearst Corporation, 185 NLRB No. 26 (Case 5-CC-446), issued August 27, 1970.

STATEMENT OF THE CASE

During September and October, 1968, American Federation of Television and Radio Artists, Washington-Baltimore Local, AFL-CIO (hereinafter referred to as AFTRA or the Union), was engaged in a labor dispute with WBAL Division, The Hearst Corporation (hereinafter referred to as WBAL). On September 23, 1968, and October 2, 1968, AFTRA pickets appeared at the premises of Baltimore News American Division, The Hearst Corporation (hereinafter referred to as News American). WBAL and News American are divisions of The Hearst Corporation (hereinafter called Hearst), a Delaware corporation with executive offices in New York.

On each instance, publication of the News American was curtailed as employees refused to cross the picket line. The News American filed an unfair labor practice charge against the Union with the National Labor Relations Board (hereinafter referred to as the Board). On October 2, 1968, John A. Penello, Regional Director of the Fifth Region of the Board, petitioned for an injunction under Section 10(1) of the Act. On October 7, 1968, a Complaint was issued against the Union. A temporary restraining order was issued and, after testimony was taken and briefs and oral argument were submitted, the United States District

Court for the District of Maryland issued a temporary injunction (App. 2-86).

On November 6, 1968, a hearing was held on the Complaint before Trial Examiner Samuel M. Singer (App. 86-128). On January 27, 1969, the Trial Examiner issued a decision finding the Union engaged in secondary picketing in violation of the Act and recommended that an appropriate Order issue (App. 147-169). Timely exceptions were filed by the Union and on August 27, 1970, the Board issued a Decision and Order adopting the findings, conclusions and recommendations of the Trial Examiner as reported in 5-CC-446, 185 NLRB No. 26. The Union has petitioned this Court to set aside that Decision and Order of the Board and the Board has cross-petitioned to enforce that Decision and Order. News American intervenes in support of the cross-petition.

ARGUMENT

A. Economic Relations, Not the Sterile Application of Statutory Language, Determine Rights under Section 8(b)(4) of the Act.

The entire framework of labor law in this country entails the regulation and control of two competing factors. There is the right of employers to carry on their businesses and employ workers unmolested and undeterred. This is not a narrow privilege vouchsafed to a management class of society, but rather is a primal ingredient and a foundation in the success of the free enterprise system.

There is also the right of workers and employees, through collective action, to obtain for themselves their fair share of the profits of their labors. Though more lately born, this latter right grew strong, fed in large part by statutory enactments. Organized labor has been given the right under Section 13 of the Act to concertedly pressure their

employer to give them a greater share of the income they generate. But with this right go certain limitations.

Section 8(b)(4) of the Act imposes one such restriction and makes it unlawful:

"(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;"

This provision limits the location and extent of the strike right now vested in unions. A union, to paraphrase the Act, may strike *the employer and only the employer* of its members. The Board and the courts have interpreted Section 8(b)(4) in:

"... conformity with the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending em-

employers and others from pressures in controversies not their own." *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, 692 (1951).

Employees may only bring pressure on *their employer*. This is the cornerstone of Section 8(b)(4) protection. Stated in a more basic fashion:

"The strike became a lawful instrument in a lawful economic struggle or competition *between employer and employees* as to the share or division between them of the joint product of labor and capital." (Emphasis added.) *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209 (1921).

Section 10(e) of the Act gives employers struck in violation of Section 8(b)(4) prompt relief from the effects of picketing against them. The Board and the courts have adopted criteria for determining when Section 8(b)(4) sanctions should be applied to determine whether employees are pressuring *their employer* or a neutral. The "control test", as stated in the cases, is merely the means whereby this determination is made in the unusual framework of labor relations. In *N.L.R.B. v. Hearst Publications, Inc.*, 322 U.S. 111 (1944), Justice Rutledge held, for the Court, that the definition of employee-employer does not depend on state or common law definitions for labor relations purposes. In summation, he said at p. 129:

"In this light, the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as 'employee', 'employer', and 'labor dispute', leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications".

It is precisely this type of "technical" and "previously established" classification upon which AFTRA is completely

dependent when it asserts that the corporate structure of Hearst should dictate whether the News American is entitled to Section 8(b)(4) protection. The control test entails a consideration of precisely those "economic facts" which the Court has said determine who is an employer.

The Board has spelled out these "economic facts." It has said that a person is the employer of those over whom he holds the following powers:

1. The power to hire.
2. The power to fire.
3. The power to promote.
4. The power to discipline.
5. The power to determine rates of pay.
6. The power to supervise.
7. The power to determine policy matters affecting their employment.

See *Roane-Anderson Company*, 95 NLRB 1501 (1951).

A comparison between these attributes of the employment relation and the factors discussed in cases of precedential value to the issue at hand makes the similarity apparent. See *Bachman Machine Company v. N.L.R.B.*, 266 F. 2d 599 (8th Cir. 1959); *Miami Newspaper Pressmen, Local 46 v. N.L.R.B.*, 116 U.S. App. D.C. 192, 322 F. 2d 405 (1963); *Pooles Warehousing, Inc.*, 158 NLRB 1281 (1966); and *J. G. Roy & Sons Co. v. N.L.R.B.*, 251 F. 2d 771 (1st Cir. 1958).

The Union here takes great pains to show that, at the time Section 8(b)(4) was amended in 1959 and the word "employer" in the section was changed to the word "person", there was no intention to enlarge the protection of the Act to nonincorporated divisions of a corporation. But this argument completely ignores what this Court so suc-

cinctly stated in *Local No. 24, International Brotherhood of Teamsters, etc. v. N.L.R.B.*, 105 U.S. App. D.C. 271, 266 F. 2d 675, 680 (1959):

"The answer to the problem before us cannot be reached by the use of any legalistic word or phrase, such as 'co-employer', or 'independent contractor', or even 'ally'. It cannot be solved by the strict application of the technicalities which adhere to such legal terms. The problem is, as dissenting member Bean put it, whether the facts and circumstances are such that the strikers violated the secondary boycott provision of the statute when they picketed the terminals of ACE and induced the employees of ACE to honor their picket lines.

It is our view that the relationships of ACE, these drivers, and the lessor-owners are so intertwined with respect to employment that ACE was not protected by the statute against the impact of a strike by the drivers against the lessor-owners. The many tiny strands of ACE control over these drivers cannot be extricated from the total fabric of mutual obligation. Those strands are clearly part of the pattern of the employer-employee relationship.

As we pointed out in *Seafarers International Union, etc. v. N.L.R.B.*, this section (8(b)(4)(A) and (B)) cannot be read or applied literally; it must be construed. Of course, in an area so wide as is the field of labor relations, there are many situations in which the answer to a dispute under this section is easily derived by the application of such legalistic formulae as 'independent contractors', 'co-employers', or 'allies'. But it is equally clear that there is a zone of dispute in which such formulae are useless, and the answer must be derived by applying the intent of the statute to the facts in the case. This is such a case. We need not devise a new word to describe the relationship here depicted. We think the Board erred in limiting itself to the meaning of the legal term 'independent contractor'."

Thus the teachings of this and other courts is that when interpreting Section 8(b)(4), emphasis is given, not to words of legal art, but to the economic relations between the strikers and the struck party. This case is in a "zone of dispute in which such formulae are useless" and the attempt by the Union to show that the 1959 amendment to the Act does not extend the Act to corporate divisions is irrelevant. If a corporate division is the employer of strikers, it, and it alone, may be struck. All other divisions are protected by the Act.

This logic, inescapable in the labor relations context, is seen in every case decided under this section. In *Buchman Machine Company v. N.L.R.B.*, 266 F. 2d 599, 605 (8th Cir. 1959), the court said:

"The Board's conclusion, in our opinion, was not in conformity with the congressional purpose of shielding unoffending *employers*, their employees, and others, from pressure in controversies not their own. We fail to see why *Bachman* should, under the evidence, be regarded as an offending *employer* . . ." (Emphasis supplied.)

Or note a portion of the dissent in *United Brotherhood of Carpenters and Joiners*, 118 NLRB 286, 292 (1957), quoting Senator Taft during Congressional debate on the original Act:

"The secondary boycott ban . . . is not intended to apply to a case where [the secondary employer] is, in effect, in cahoots with or acting as a part of the primary employer . . . where the secondary employer is so closely allied to the primary employer as to amount to an *alter ego* situation or an *employer relationship*." (Emphasis supplied.) 95 Cong. Rec. 8709.

So it is clear that if the secondary employer cannot be said to stand as the "alter ego" of the primary employer

he is entitled to Section 8(b)(4) protection. The term "ally" is just another label for the secondary employer's status.

As was stated by the Supreme Court in a similar context:

"The presence of a subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same. In each the union was trying to protect the job on which union men were employed. If that is forbidden, the Taft-Hartley Act makes the right to strike, guaranteed by §13, dependent on fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned". *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, 693 (1951) (Dissent, Douglas, J.)

Similarly, the protection of Section 8(b)(4) should not be based on "fortuitous business arrangements" but on the extent to which the facts show who the primary employer is within the meaning of the Act.

It is necessary to follow the uniform holdings and determine the rights in this situation not by attaching significance to words like "corporation", "person", "subsidiary" or "employer" but by looking to the economic relation between the striker and the object of the strike to see if the economic relation between the parties justifies allowing the strike.

B. WBAL, and Only WBAL, Is the Employer of the AFTRA Members Who Picketed the News American.

Factually, WBAL and News American are six miles apart and carry on entirely different businesses. They have, between them, little in common except that both are involved in media. The Union has never seriously asserted that the two divisions are sufficiently allied to justify striking both.

The News American had no dispute of any kind with AFTRA, nor has it ever even had any relationship with AFTRA. Establishment of an AFTRA picket line at the News American involved the latter in a labor dispute completely alien to it. The Union justified this action solely on the ground of ownership and control of WBAL and the News American.

The Union contends that Hearst's New York office — a three-man operation — exerts control over its corporate divisions sufficient to justify calling it the employer of News American and WBAL employees.

The evidence of such control from the New York Hearst office on the two separate divisions in Baltimore is slight indeed, but will be reviewed and placed in its proper context.

The New York office of Hearst under the primary responsibility of Richard E. Berlin, President and Chief Executive Officer of The Hearst Corporation, appoints all division heads and appointed the heads of both WBAL Radio and Television and the News American.

The manner in which this gives Hearst final responsibility for the Company's end of the economic relation between labor and management; the way in which this gives three men in New York the power to (in the words of the *Roane-Anderson* case) hire, fire, promote, discipline, determine pay scales, supervise and adopt company policy for employees of Hearst divisions is not discernible.

Hearst could have drawn up a whole set of instructions covering employer-employee relations and put it in the pocket of each division head. But the facts show that the heads of WBAL and the News American were given complete authority by Mr. Berlin to run their division "as if they owned it" (App. 100).

Hearst had a representative at WBAL until 1966. However, he was present only to advise the station on F.C.C. matters and was removed two years before this case began (App. 107).

Though budgets are submitted by each division yearly, neither WBAL's nor the News American's budget has ever been questioned (App. 33-34, 70). Capital expenditures in excess of \$10,000 are also submitted to New York. Yet the Union has not shown how these facts tie the two Baltimore divisions together to make them a single employer.

The Union points out eagerly that WBAL has stated in its F.C.C. application that it is owned and operated by Hearst. It also asserts that WBAL announces at sign-off that it is owned and operated by Hearst, and has announced that it is "the News American station" or has "direct lines to the News American". These are words without significance, for they do not relate to the economic facts which tie the Union to WBAL alone.

Finally, the Union argues that because Hearst owns both divisions, profits from each division go to Hearst, which can thus support any single division in an economic strike. There is no evidence that any division profits are transferred to Hearst, much less that such profits are used to support other divisions in labor disputes. When Mr. Berlin refers in his testimony to the "bottom line" of each division's balance sheet, he, of course, is referring to the success that a division is having. To read from his words the fact that divisions give part of the "bottom line" to Hearst for use in supporting other Hearst divisions involved in labor disputes is fantasy.

The Union asserts that the fact of centralized ownership is unique and for this reason discounts the precedential

value of cases interpreting Section 8(b)(4). However, those same cases dealt with employers who had common owners. These cases never turned on the fact that, because of this interlocking ownership, one employer could aid another in an economic strike. Yet clearly, such aid could have been given.

Unquestionably, formal control over the companies involved in most of these cases was pronounced. It varied from the Hearst type of arrangement in name only. In *Miami Newspaper Pressmen, Local No. 46 v. N.L.R.B.*, 116 U.S. App. D.C. 192, 322 F. 2d 405 (1963), a Section 8(b)(4) case involving two newspapers, this Court noted the type of control which Knight Newspapers had over the Miami Herald and the Detroit Free Press. The stock of Knight Corporation was owned by James, John and Clara Knight. James ran the Miami Herald. John was the president of both it and the Free Press. James and Clara sat on the Board of Directors of each. This control is even more potent than that exercised by The Hearst Corporation since the directors and officers of the holding company are much closer to the operations of the two businesses than are the Hearst officials. Yet this Court held they were separate employers. The ability to pool corporate wealth at the apex of the business hierarchy was not held to ally two separate employers.

Likewise, in *Poole's Warehouse*, 158 NLRB 1281 (1966), two brothers owned and operated both the warehouse company and the drayage company involved. The two companies had common officers and directors. It should also be noted that the brothers had the power to transfer the operational heads of the two companies and did, in fact, transfer the manager of drayage to warehousing. The Board held they were separate employers.

The corporate structure of J. G. Roy and Sons Co. [*United Brotherhood of Carpenters and Joiners*, 118 NLRB 286 (1957)] showed overlapping control at the top. Both companies were owned by five brothers — George, Joseph, Edmund, Fred and Leo Roy. All five were on the Board of Directors of Roy Construction and all but Leo made up the Board of Directors of Roy Lumber. Profits from both companies were divided equally among the five. Joseph and George operated Roy Construction and Edmund and Fred ran Roy Lumber, though the managers of one company did not advise or interfere with the managers of the other company. It was held that they were separate employees.

In *Bachman Machine Company v. N.L.R.B.*, 266 F. 2d 599 (8th Cir. 1959), William Bachman was president and majority shareholder of each company. He owned and leased the buildings in which the two companies were housed, and he controlled the labor relations policy for both companies. The court held they were separate employers.

In *Schauffler v. District 65, Retail, Wholesale and Department Store Union*, 33 L.C. Par. 71,210 (E.D. Pa. 1957), the District Court issued an injunction against a union picketing a retail outlet, Chandler Shoes, even though Chandler was closely related to the manufacturer of the shoes, Cellini, against whom the union had a primary dispute. A part of the stock of the manufacturing corporation was owned by the retail corporation and the family members who ran the retail company. The presidents of the two corporations were brothers. The president and officers and directors of the retail corporation were also officers and directors of the manufacturing corporation. But the court held they were separate employers.

If the rationale of these cases is viewed in its broadest light, the courts obviously rely on substance rather than

form and properly so. AFTRA's basic argument is the fact that since Hearst chooses not to separately incorporate each division, then it must make the ultimate sacrifice in all of its labor relations with each of the many unions with whom those divisions separately deal. The Union contends that this sacrifice can be avoided by the simple expedient of preparing articles of incorporation for each division and the payment of \$30.00 to the State Department of Assessments and Taxation to create such entities. Or presumably, if Hearst did not wish to make a \$60.00 investment, it need only incorporate one of the Baltimore divisions, and in that way magically remove the threat of stranger pickets around the premises of both divisions.

To give effect to such specious reasoning would be to completely ignore the intention of the Supreme Court in the *Denver Building and Construction Trades Council* case when it indicated the purpose of the Act was to shield "unoffending employers and others from pressures in controversies not their own". For that reason, form should not dictate here any more than the Board and the courts were persuaded by mere form alone, in the other cases cited, to reach the ultimate conclusion.

The facts upon which the Union relies do not answer the central issue in this case: Who is the employer of WBAL employees?

An employee who is fined for misconduct does not seek reinstatement at the New York offices of Hearst. The Union does not attempt to negotiate the salaries of its men with anyone other than WBAL management. None of the AFTRA pickets who walked outside WBAL and the News American were hired by Mr. Berlin. In fact, there is no evidence in this case that Hearst controls, or has the ability or desire to control, the attributes of the economic relation-

ship of employer-employee which are determinative of the Act's protections (App. 100).

Had WBAL, at the start of the most recent contract negotiations, told the Union to go to New York and bargain the AFTRA-WBAL contract with Hearst officials, the response would have been immediate and predictable. A charge of failing to bargain in good faith would have been lodged against WBAL, and properly so. WBAL is responsible for bargaining with the Union for it, and it alone, employs AFTRA members.

Labor relations policy should be given more weight than any other single factor. For the real employer could determine hiring, discipline, promotion, rates of pay, supervision and other policy through the collective bargaining agreement and then turn over its administration to a person over whom he has no control save in the knowledge that the contract assures promulgation of his, the real employer's, policies. The importance of labor relations policy is pointed up in *Bachman Machine Company v. N.L.R.B.*, 266 F. 2d 599 (8th Cir. 1959).

There is no evidence here that the New York headquarters of Hearst dictates, controls, or even influences labor relations policy for WBAL. Brent O. Gunts, head of WBAL-TV, testified that during this strike he never received any directions from Hearst (App. 34-35). It was also testified by Mr. Gunts, contrary to the Union's assertions based on Respondent's Exhibits 1(A) and 1(B) (App. 129-131), that he has final authority to sign collective bargaining contracts covering WBAL employees (App. 39-40). This was affirmed by Mr. Berlin (App. 113).

Thus the Union has raised few facts to prove a connection between WBAL and Hearst besides the "fortuitous business arrangement" of corporation and division. Clearly,

these facts do not establish that anyone, other than WBAL, employs AFTRA members. Under the intention and rationale of Section 8(b)(4), this makes Hearst and other Hearst divisions neutrals entitled to the Act's protection.

CONCLUSION

In order to balance the countervailing rights of organized labor and management in the commercial setting, it has been necessary in this case to consider substantive economic relationships to reach the intent of the National Labor Relations Act. The Act intends that employees strike only their employer. The test for determining whether an employment relation exists is set down in the precedent cases. The evidence here conclusively shows that WBAL is the only employer of Union personnel here involved. Neither Hearst nor News American is the employer. Thus the Act intends that only WBAL could be struck.

Perhaps the most persuasive answer to the questions posed is made by considering the total affect of the power that the Union here seeks. Allowing AFTRA to picket all Hearst divisions would, given the extent of those divisions, put reporters and pressmen, miners and ranchers and hundreds of other employees of Hearst divisions, almost all of whom would be totally unconcerned with the labor dispute, on the roles of the jobless (App. 97-98). The right here sought, when multiplied by the number of unions that represent Hearst division employees throughout the country, could result in almost constant picket lines at every Hearst facility. Intervenor submits that this would be the grossest misapplication of the Act and would ultimately be a detriment to the public interest which the Act was meant to serve.

Intervenor requests this Court to grant the Cross-Petition for Enforcement of the Decision and Order of the National Labor Relations Board herein and deny the Petition to Review and Set Aside that Decision and Order.

Respectfully submitted,

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